

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STUDENTS FOR FAIR ADMISSIONS, INC.,

Plaintiff,

Civil Action
No. 14-14176-ADB

v.

October 24, 2018

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE, et al.,

Pages 1 to 245

Defendants.

TRANSCRIPT OF BENCH TRIAL - DAY 8
BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
ONE COURTHOUSE WAY
BOSTON, MA 02210

JOAN M. DALY, RMR, CRR
KELLY MORTELLITE, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 5507
Boston, MA 02210
joanmdaly62@gmail.com

1 APPEARANCES:

2 COUNSEL FOR THE PLAINTIFF:
3

4 ADAM K. MORTARA, ESQUIRE
5 J. SCOTT McBRIDE, ESQUIRE
6 KRISTA J. PERRY, ESQUIRE
7 Bartlit Beck Herman Palenchar & Scott
8 54 West Hubbard Street
9 Suite 300
Chicago, Illinois 60654
312.494.4400
adam.mortara@bartlit-beck.com
scott.mcbride@bartlit-beck.com
krista.perry@bartlit-beck.com

10 JOHN M. HUGHES, ESQUIRE
11 KATHERINE L.I. HACKER, ESQUIRE
12 MEG E. FASULO, ESQUIRE
13 Bartlit Beck Herman Palenchar & Scott
14 1801 Wewatta Street
15 Suite 1200
Denver, Colorado 80202
303.592.3100
john.hughes@bartlit-beck.com
kat.hacker@bartlit-beck.com
meg.fasulo@bartlit-beck.com

16 JOHN MICHAEL CONNOLLY, ESQUIRE
17 THOMAS R. MCCARTHY, ESQUIRE
18 WILLIAM S. CONSOVOY, ESQUIRE
19 Consovoy McCarthy Park PLLC
20 3033 Wilson Boulevard
21 Suite 700
Arlington, Virginia 22201
703.243.9423
mike@consovoymccarthy.com
tom@consovoymccarthy.com
will@consovoymccarthy.com

22
23
24
25

1 APPEARANCES (cont.):

2 PATRICK STRAWBRIDGE, ESQUIRE
3 Consovoy McCarthy Park PLLC
4 Ten Post Office Square
5 8th Floor, South, PMB #706
6 Boston, Massachusetts 02109
7 617.227.0548
8 patrick@consovoymccarthy.com

9 MICHAEL H. PARK, ESQUIRE
10 Consovoy McCarthy Park PLLC
11 3 Columbus Circle
12 15th Floor
13 New York, New York 10024
14 646.456.4432
15 park@consovoymccarthy.com

16 PAUL M. SANFORD ESQUIRE
17 BENJAMIN C. CALDWELL, ESQUIRE
18 Burns & Levinson LLP
19 One Citizens Plaza
20 Suite 110
21 Providence, Rhode Island 02903
22 401.831.8330
23 psanford@burnslev.com
24 bcaldwell@burnslev.com

25 COUNSEL FOR THE DEFENDANT:

WILLIAM F. LEE, ESQUIRE
FELICIA H. ELLSWORTH, ESQUIRE
ANDREW S. DULBERG, ESQUIRE
ELIZABETH C. MOONEY, ESQUIRE
SARAH R. FRAZIER, ESQUIRE
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, Massachusetts 02109
617.526.6556
william.lee@wilmerhale.com
felicia.ellsworth@wilmerhale.com
andrew.dulberg@wilmerhale.com
elizabeth.mooney@wilmerhale.com
sarah.frazier@wilmerhale.com

1 APPEARANCES (cont.):

2 SETH P. WAXMAN, ESQUIRE
3 DANIELLE CONLEY, ESQUIRE
4 DANIEL WINIK, ESQUIRE
5 BRITTANY AMADI, ESQUIRE
6 PAUL R.Q. WOLFSON, ESQUIRE
7 Wilmer Cutler Pickering Hale and Dorr LLP
8 1875 Pennsylvania Ave, NW
9 Washington, DC 20006
202.663.6006
seth.waxman@wilmerhale.com
danielle.conley@wilmerhale.com
daniel.winik@wilmerhale.com
brittany.amadi@wilmerhale.com
paul.wolfson@wilmerhale.com

10 DEBO P. ADEGBILE, ESQUIRE
11 Wilmer Cutler Pickering Hale and Dorr LLP
12 7 World Trade Center
13 250 Greenwich Street
212.295.6717
debo.adegbile@wilmerhale.com

14 ARA B. GERSHENGORN, ESQUIRE
15 Harvard Office of the General Counsel
16 Smith Campus Center
17 Suite 980
1350 Massachusetts Avenue
Cambridge, Massachusetts 02138
617.495.8210
ara_gershengorn@harvard.edu

18
19 COUNSEL FOR AMICI STUDENTS:

20 JON M. GREENBAUM, ESQUIRE
21 BRENDA L. SHUM, ESQUIRE
22 GENEVIEVE BONADIES TORRES, ESQUIRE
23 KRISTEN CLARKE, ESQUIRE
1500 K Street NW, Suite 900
Washington, DC 20005
202.662.8315
jgreenbaum@lawyerscommittee.org
24 bshum@lawyerscommittee.org
gtorres@lawyerscommittee.org
25 kclarke@lawyerscommittee.org

1 APPEARANCES (cont.):

2 LAWRENCE CULLEEN, ESQUIRE
3 EMMA DINAN, ESQUIRE
4 Arnold & Porter LLP
5 555 Twelfth Street, NW
6 Washington, DC 20004
202.942.5477
gina.dean@aporter.com
emma.dinan@aporter.com

7 COUNSEL FOR AMICI ORGANIZATIONS:

8 JENNIFER A. HOLMES, ESQUIRE
9 CARA McCLELLAN, ESQUIRE
JIN HEE LEE, ESQUIRE
10 MICHAEL M. TURNAGE YOUNG, ESQUIRE
11 RACHEL N. KLEINMAN, ESQUIRE
NAACP Legal Defense and Educational Fund, Inc.
12 700 14th Street NW
Suite 600
13 Washington, DC 20005
jholmes@naacpldf.org
cmcclellan@naacpldf.org
14 jlee@naacpldf.org
myoung@naacpldf.org
15 rkleinman@naacpldf.org

16 KENNETH N. THAYER, ESQUIRE
17 KATE R. COOK, ESQUIRE
Sugarman Rogers
18 101 Merrimac Street
Suite 900
19 Boston, Massachusetts 02114
617.227.3030
thayer@sugarmanrogers.com
20 cook@sugarmanrogers.com

21

22

23

24

25

P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Allison D. Burroughs, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on October 25, 2018.)

THE COURT: We're a couple of minutes early, but if you guys are ready to start, we can start.

Just for scheduling purposes, I can go as late as you want today. So -- by which I mean really as late as you want. I could go to 4:00. We can even go beyond that, if you want to. I don't have anything scheduled after this. But I'll leave it up to you when you come to a good stopping spot.

I would also like to take just a little bit longer lunch today just so I can breathe some air in the middle of the day. So maybe we'll take an hour lunch today, but we'll sit longer at the end of the day.

And also, I was thinking about this case last night, and I know we're just about at the halfway point, and I just want to take the opportunity to really thank and compliment you all for the job that you're doing on this. It's really -- the level of lawyering is exceptional, and as we've all discussed at various points during this trial,

1 there are a lot of difficult issues that raise issues that
2 are personal to people and that people feel very strongly
3 about, and I really appreciate the level of professionalism
4 and civility that you guys are demonstrating, are
5 demonstrating throughout. So I know -- I sort of thought
6 we're halfway, I thought I would take the time to mention it.

7 And really, I would like to go back and reiterate
8 that the level of lawyering in this case has really been
9 exceptional. I hope that my level of judging lives up to the
10 level of lawyering. But you guys are really just doing an
11 incredible job with what's a difficult case all the way
12 around. So my appreciation and compliments for that. And
13 when you want to go, feel free.

14 MR. HUGHES: Thank you, Your Honor. I thank you
15 and I try to speak for everyone for your kind words. I'm not
16 sure if I'm fortunate or unfortunate to follow the
17 compliment.

18 THE COURT: You've been unfailingly pleasant,
19 Mr. Hughes. I'm sure you can --

20 MR. HUGHES: Thank you, Your Honor.

21 MR. LEE: On this issue, we're perfectly happy to
22 have Mr. Hughes speak for us.

23 MR. HUGHES: Yesterday we suggested our next live
24 witness will be Roger Banks. We've actually worked with
25 Harvard to call Mark Hansen, so we now call Mark Hansen as

1 our next witness.

2 And I'd like to approach, Your Honor.

3 THE COURT: Yes, that's fine.

4 MR. LEE: Your Honor, before we do direct on
5 Mr. Hansen, just on the scheduling issue, as Your Honor looks
6 into next week, I have a request that on Halloween -- we have
7 some parents and grandparents who might like to end a little
8 early.

9 THE COURT: I was going to suggest the same thing
10 because it's a big night at our house as well. So let me
11 know what time you all want to stop and we can -- that's
12 fine.

13 MR. LEE: I'll talk to Mr. Hughes and we can figure
14 it out.

15 MR. HUGHES: Sounds good.

16 THE COURT: And I know it's a big night at our
17 house, but I presume you all aren't traveling in honor of the
18 holiday. But if you are, I'm happy to accommodate that.

19 MR. HUGHES: We're going to have some sad boys in
20 Denver, but I will not be returning home.

21 THE COURT: If you want to take my kids trick or
22 treating --

23 MR. HUGHES: What are their outfits?

24 THE COURT: They're -- one of them is Link from
25 Zelda, if anyone has any idea what that is, because I know I

1 don't. And the other is a mix of Spartan accoutrements that
2 he has collected.

3 With my kids, I don't really know what your boys
4 are like, but with my kids it's actually all about the
5 weapon.

6 MR. HUGHES: They're generally like that, although
7 I think -- I've got five, and they're going as the various
8 members of the cast of Hamilton. If I were there, I guess I
9 would be Hamilton, but yeah.

10 THE COURT: That is very organized. Our house has
11 been nothing like that and it is all about the weapon.

12 MR. HUGHES: It is Mrs. Hughes that is responsible
13 for that. All right.

14 THE COURT: You probably have great holiday cards,
15 too.

16 MR. HUGHES: Yes.

17 (MARK HANSEN duly sworn by the Deputy Clerk.).

18 THE CLERK: Can you please state your name and
19 spell your last name for the record.

20 THE WITNESS: Sure. It Mark Hansen, H-a-n-s-e-n.

21 EXAMINATION BY MR. HUGHES:

22 **Q.** Good morning, Mr. Hansen.

23 **A.** Good morning.

24 **Q.** My name is John Hughes. We haven't met before. It's
25 nice to meet you.

1 **A.** You as well.

2 **Q.** I'm not going to ask you what you're going to be for
3 Halloween.

4 Now, I'd like you to just -- go over a little bit
5 of your background with you. I understand that you went to
6 Boston University?

7 **A.** Yes, I did.

8 **Q.** And you majored in pure and applied mathematics at Boston
9 University?

10 **A.** That's correct.

11 **Q.** And then after you graduated from B.U., you continued
12 your education and you got your master's degree from the
13 Harvard Graduate School of Education, correct?

14 **A.** Yes, a couple years after.

15 **Q.** And then after you graduated from the Harvard Graduate
16 School of Education, you ultimately got a job at Harvard in
17 Harvard's Office of Institutional Research, correct?

18 **A.** That's correct.

19 **Q.** Okay. And you started at OIR -- and OIR is a common way
20 people refer to the Office of Institutional Research,
21 correct?

22 **A.** Yes.

23 **Q.** Okay. You started at OIR as a project management fellow,
24 correct?

25 **A.** That's correct, yes.

1 Q. And that was sometime in the summer of 2010, correct?

2 A. Yes.

3 Q. Okay. And then after you had been there at OIR about a
4 year, you got the title, I assume it was a promotion, to
5 research analyst, correct?

6 A. That's correct, yes.

7 Q. Okay. And that was in July 2011, correct?

8 A. I'm not sure of the exact date.

9 Q. Sometime that summer, right?

10 A. Thereabouts, yes.

11 Q. Okay. And while you were at OIR, or at least for part of
12 the time you were at OIR, you reported directly to Erica
13 Bever, correct?

14 A. Yes, for a portion of my time there.

15 Q. Okay. And you ended up leaving Harvard's Office of
16 Institutional Research in the middle of the summer of 2013,
17 correct?

18 A. Yes.

19 Q. And why -- where did you go after you left OIR?

20 A. I went to MIT's Office of Institutional Research,
21 Massachusetts Institute of Technology.

22 Q. And that's where you still work today?

23 A. I work at MIT, yes.

24 Q. Still in their Office of Institutional Research?

25 A. No, I work for a research group on campus, COFHE.

1 Q. And you've been with MIT since you left Harvard in 2013,
2 correct?

3 A. That's correct.

4 Q. I want to focus with you briefly this morning,
5 Mr. Hansen, about some work that you did at OIR in early
6 2013. Do you have that timeframe in mind?

7 A. Thereabouts, yes.

8 Q. Okay. And by the time 2013 rolled around, you had been
9 at Harvard's Office of Institutional Research for about two
10 and a half years, correct?

11 A. I think that sounds right, yes.

12 Q. Started in the middle of 2010. By the time we get to
13 early 2013, that's about two and a half years, right?

14 A. Sure, yes.

15 Q. Okay. And while you were at OIR, you did work regarding
16 Harvard's use of preferences in admissions. That's part of
17 the work you did, right?

18 A. I'm sorry. Could you repeat the question?

19 Q. While you were at OIR, some of the work that you did
20 related to Harvard's use of preferences in admissions,
21 correct?

22 A. Preferences in the various kind of inputs that would go
23 into an admission's decision.

24 Q. And one of the preferences that you looked at was
25 Harvard's use of race in its admissions process, correct?

1 **A.** Yes.

2 **Q.** Okay. And part of the reason that you were looking at
3 race in Harvard admissions in the 2013 timeframe was because
4 of information in the popular press about race and college
5 admissions, correct?

6 **A.** It was related to that, yes.

7 **Q.** And one of the articles that you were at least aware of
8 was an article by a man named Ron Unz, correct?

9 **A.** I was aware of it, yes.

10 **Q.** And among other things, you were aware that in the Unz
11 article he raised concerns about Harvard's treatment of Asian
12 applicants in its admissions process, correct?

13 **A.** Among other things, yes.

14 **Q.** Okay. And in early 2013, you did some work relating to
15 that -- the issues that Unz raised around Asian-American
16 applicants to Harvard, correct?

17 **A.** I would say related to admissions preferences, but tied
18 to the Unz article.

19 **Q.** And you did not do that analysis -- and we're going to
20 discuss it in more detail in a minute -- but you didn't do
21 that analysis on your own initiative. Somebody asked you to
22 do that work, correct?

23 **A.** Yes.

24 **Q.** Now, you couldn't remember at your deposition who asked
25 you to do that work. Do you remember now?

1 **A.** No. It likely would have been internal to the office,
2 though.

3 **Q.** Internal to OIR?

4 **A.** Yes.

5 **Q.** Okay. Now, the analysis of whether Asians were being
6 disadvantaged in the admissions process was a product of OIR,
7 correct?

8 **A.** The study involving admissions preferences was a product
9 of OIR, yes.

10 **Q.** You keep changing the word to "admissions preferences,"
11 but you agree that you did analysis related to whether Asians
12 were being disadvantaged in the admissions process and that
13 was a product of OIR, correct?

14 **A.** I'm sorry. Could you repeat the question?

15 **Q.** The analysis of whether Asians were being disadvantaged
16 in the admissions process was a product of OIR, correct?

17 **A.** The analysis of admissions preferences would have been a
18 product of OIR, and that would have included race as one of
19 those preferences.

20 **Q.** I'll ask it again. The analysis of whether Asians were
21 being disadvantaged in the admissions process was a product
22 of OIR, correct?

23 **A.** The analysis that looked at admissions preferences that
24 included race and ethnicity was a product of OIR.

25 **Q.** I've got a couple of things there next to you,

1 Mr. Hansen. One of them is a spiral-bound copy of your
2 deposition transcript.

3 **A.** Mm-hmm.

4 **Q.** Okay. I'd like you to turn to page 21 of that, line 24.
5 Are you there?

6 **A.** I am.

7 **Q.** "Question: Sure. Would you describe the analysis of
8 whether Asians were being" -- next page -- "disadvantaged in
9 the admissions process as a product of the Office of
10 Institutional Research?

11 "Answer: I would, yes."

12 Were you asked that question and did you give that
13 answer?

14 **A.** Yes.

15 **Q.** The work you did at OIR regarding Asians in Harvard's
16 admissions process spanned multiple months, correct?

17 **A.** Sorry. Could you repeat the question.

18 **Q.** The work you did at OIR regarding Asians in Harvard's
19 admissions process spanned multiple months, correct?

20 **A.** It would be a little broader than that, so it would be a
21 number of different admissions analyses.

22 **Q.** But it included this analysis of whether Asians were
23 disadvantaged in the admissions process, right?

24 **A.** It included the admissions preferences analysis.

25 **Q.** Is there a reason why in your deposition you used the

1 language of Asians being disadvantaged in the admissions
2 process over and over again and now you want to keep talking
3 about preferences in the admissions process? Is there a
4 reason why you're making that distinction?

5 MS. ELLSWORTH: Your Honor, I object. The language
6 from the deposition that Mr. Hughes read was the language of
7 the questioner, not Mr. Hansen. I don't think it's an
8 appropriate question. I don't think it was proper
9 impeachment either.

10 THE COURT: I take your point, but I'll let him
11 have the question.

12 MR. HUGHES: Thanks.

13 **Q.** Do you want me to repeat it?

14 **A.** Sure.

15 **Q.** Is there a reason in your deposition that you agreed with
16 questions characterizing your work as analyzing whether
17 Asians were disadvantaged in the admissions process over and
18 over again and today you only want to talk about preferences
19 in the admissions process?

20 Is there a reason why you're adopting that
21 different language?

22 **A.** I accepted the premise of the question, and it really
23 narrowed the description of the work a little further than
24 what it actually was. So it covered race and ethnicity as
25 one component, but it also looked at legacy and athlete

1 status.

2 **Q.** And you, in fact, recall multiple iterations into the
3 question of whether Asians were being disadvantaged in
4 Harvard's admissions process, correct?

5 **A.** I recall multiple admissions projects where race would
6 have been a component in the analysis.

7 **Q.** Is it your testimony that you remember multiple
8 iterations into whether Asians were being disadvantaged in
9 the admissions process?

10 **A.** I recall multiple iterations where Asian would have
11 been -- or race ethnicity would have been a component in the
12 output from the analysis.

13 **Q.** Why don't you turn to page 105 of your deposition, line
14 4. Are you there?

15 **A.** I am.

16 **Q.** "Is it your testimony that you remember multiple
17 iterations into whether Asians were being disadvantaged in
18 the admissions process?

19 "Answer: Yes."

20 Do you see that?

21 **A.** I do.

22 **Q.** Is that your sworn testimony?

23 **A.** It is.

24 **Q.** Now, I want to talk with you about some of the iterations
25 that you did into whether Asians were being disadvantaged in

1 the admissions process, and I'll start with Plaintiff's
2 Exhibit 12.

3 And you've got a binder, Mr. Hansen, and the tab
4 should say P12, if you want to look at the hard copy. I've
5 also got an image of the document on the screen. You can
6 look at either or both, okay?

7 **A.** Okay. Thank you.

8 **Q.** Is P12 something that you've seen before?

9 **A.** Is it okay if I flip through it?

10 **Q.** Please do.

11 **A.** Okay. Thank you.

12 **Q.** Have you seen this document before?

13 **A.** Yes, in some form.

14 **Q.** Okay. And I want to show you -- we're going to look at
15 various pages, but I'm going to start with page 34. I'm
16 going to put it up on the screen.

17 You're familiar with page 34 of this document,
18 correct?

19 **A.** I am, yes.

20 **Q.** We're going to come back and talk in a little bit more
21 detail about that in a minute, but I want to now show you
22 page 3.

23 **A.** Sorry. Page 3?

24 **Q.** Yes, sir.

25 And you can see on page 3 there is kind of a --

1 somewhat of a summary of what is in the rest of this
2 PowerPoint deck, correct, some of the different topics that
3 are covered?

4 **A.** It looks like it, yes.

5 **Q.** And at the very top, the first one is "Access." Do you
6 see that?

7 **A.** I do.

8 **Q.** And the first number under access has to do with
9 "Reintroducing early action," correct?

10 **A.** Yes.

11 **Q.** And then we've got a topic related to the "Shift in
12 gender balance at Harvard College due to increased interest
13 and recruitment for SEAS," correct?

14 **A.** That's correct, yes.

15 **Q.** Okay. And then the third topic under "Access" is, "Does
16 the admissions process disadvantage Asians?" Do you see
17 that?

18 **A.** I do.

19 **Q.** Do you see right here in OIR's document the language,
20 "Does the admissions process disadvantage Asians," correct?

21 **A.** I do.

22 **Q.** Okay. Now, then, there's some other parts of the
23 PowerPoint deck, affordability and achievement, that relate
24 to different issues, correct?

25 **A.** That's what it looks like, yes.

1 **Q.** Okay. And do you remember whether Erica Bever was the
2 person who kind of assembled this PowerPoint deck and put it
3 together?

4 **A.** Not specifically, no.

5 **Q.** All right. I'm going to hand you a document that I hope
6 will refresh your recollection.

7 MR. HUGHES: Your Honor, if I may approach?

8 THE COURT: Yes.

9 THE WITNESS: Thank you.

10 MR. HUGHES: Your Honor, would you like a copy of
11 what I'm showing him?

12 THE COURT: Sure.

13 MR. HUGHES: Thank you.

14 **Q.** Now, Mr. Hansen, I know these events occurred a while
15 ago, and this is not a memory test by any means. I'm just
16 going to try to show you this email to see if I can refresh
17 your recollection on who assembled this PowerPoint deck.

18 I'd like you to just read the document to yourself
19 and then let me know when you finish reading it and I'll ask
20 you a few questions.

21 **A.** (Witness reviews document.) Okay.

22 **Q.** Now that you've read it -- let me ask you one little
23 detail question. Do you see this language here on page 3
24 that we've looked at together, slide 3?

25 **A.** Yeah, I do.

1 Q. It looks like you actually even suggested an edit to
2 slide 3, correct?

3 A. Yes.

4 Q. And having looked at this email, does it refresh your
5 recollection that Ms. Bever assembled the PowerPoint deck,
6 you made some edits to it, correct?

7 A. That seems likely, based on this email.

8 Q. You can set that aside now, Mr. Hansen. Thank you.

9 Now let's go through -- we're going to start on
10 page 31 of Plaintiff's Exhibit 12. If you want to follow
11 along in hard copy, just let me know when you get there.

12 A. Sorry. The screen is just a little blurry.

13 Q. No. It's not great resolution, so no problem at all,
14 sir.

15 So you see page 31 starts the section of the
16 PowerPoint "Evaluating factors that play a role in Harvard
17 College admission." Do you see that?

18 A. I do, yes.

19 Q. And then we turn to page 32. You see that, right?

20 A. Yeah. The slide?

21 Q. You see the slide you have in front of you?

22 A. I do, yes.

23 Q. And this is a slide that you're familiar with, correct?

24 A. Yes, I believe I made it.

25 Q. Your slide, right?

1 **A.** I think so.

2 **Q.** Okay. And the title of the slide is "Methods." Do you
3 see that?

4 **A.** Yes.

5 **Q.** And then the goal is "Using various admissions ratings,
6 how well can we approximate admit rates by race, ethnicity
7 and the demographic composition of the admitted students
8 pool."

9 Do you see that as the goal of the OIR analysis?

10 **A.** I do, yes.

11 **Q.** And this relates -- and we're going to talk about it more
12 in a minute, this relates to -- or at least relates to a
13 regression, the logistic regression model that you and OIR
14 put together, correct?

15 **A.** I believe so, yes.

16 **Q.** And then you talk about "The strategy fit a series of
17 basic logistic regression models using data from classes of
18 2007 to 2016." Do you see that?

19 **A.** Yes, I do.

20 **Q.** And what you had there was you had information about the
21 people who applied to Harvard for those years, correct?

22 **A.** Yes. It would have been mixed year to year, so some
23 years would have certain pieces of data, some years we
24 wouldn't, but overall, that's a good way of characterizing
25 it.

1 **Q.** You took the data that Harvard had -- and I understand it
2 might have varied for some variables year to year, right?

3 **A.** Yes.

4 **Q.** Okay. And you had ten years of that data for the
5 applicants that applied to Harvard, correct?

6 **A.** I'm sorry. I should have been more specific. It would
7 have been data that we had internal to the office left over
8 from prior projects.

9 **Q.** Yeah. And I was just trying to get -- the very simple
10 point is that your analysis wasn't just limited to people who
11 actually got admitted to Harvard; your analysis included
12 people that applied to Harvard for those years, correct?

13 **A.** Yes, it would have been the full.

14 **Q.** Okay. And then what you did is you generated "fitted
15 probabilities of admissions, given an applicant's
16 characteristics how likely are they to be admitted," right?

17 **A.** I'm sorry. Could you repeat --

18 **Q.** I'm just reading the slide.

19 **A.** Oh, all right then.

20 **Q.** That's what the slide says, right?

21 **A.** Yes.

22 **Q.** And then for each class, you selected "2100 applicants
23 with the highest probability of admissions as your simulated
24 admitted class." Do you see that?

25 **A.** I do, yes.

1 **Q.** So what you did, and we're going to look at it, you had a
2 model with four iterations, right?

3 **A.** Yes.

4 **Q.** And each of those four iterations had some different
5 variables, correct?

6 **A.** As inputs, yes.

7 **Q.** And then you would get -- and what you would do is you
8 would have those variables as inputs, then you'd run all the
9 applicants through the model, and you'd try to predict for
10 each of these years who would get admitted based on those
11 inputs, correct?

12 **A.** Yes.

13 **Q.** Okay. And then what you did is you would compare that to
14 the actual admitted classes over that time for certain
15 comparisons that we'll look at in a minute, right?

16 **A.** You would compare the hypothetical pool against the
17 actual in terms of -- in various demographic attributes.

18 **Q.** And then, in fact, that's the very next bullet. You
19 examine the resulting demographics and admit rates by
20 ethnicity, correct?

21 **A.** That's correct, yes.

22 **Q.** And then you made a couple of notes: "Students with no
23 academic index are excluded from this analysis."

24 That was true of your analysis, correct?

25 **A.** Yes. So that would mean that it wasn't necessarily

1 considering the full applicant pool, but it -- it dropped
2 those cases.

3 **Q.** And then you noted that: "The following analysis is
4 preliminary," bold and underlined, "and for discussion,"
5 correct?

6 **A.** Yes.

7 **Q.** And then we get to the next page, and this is where you
8 identify the input variables for your different models,
9 correct?

10 **A.** Yes.

11 **Q.** Okay. And model 1 just has two, academic index and
12 academic rating, correct?

13 **A.** Yes, as inputs.

14 **Q.** And then the other, then we get to model -- I might have
15 said model 2 just there. I meant to say model 1. That's my
16 fault, not yours, Mr. Hansen.

17 Model 1 just has academic index and academic
18 rating, correct?

19 **A.** Yes, the first one.

20 **Q.** And then the second one, model 2, keeps academic index
21 and rating, adds the legacy and athlete preference variables,
22 correct?

23 **A.** That's correct, yes.

24 **Q.** And then model 3 keeps everything that was in model 2,
25 but it adds the personal rating and the extracurricular

1 rating, correct?

2 **A.** Yes.

3 **Q.** And then model 4 keeps everything that was in model 3,
4 adds gender and ethnicity, correct?

5 **A.** That's correct, yes.

6 **Q.** And then if we turn the page, this shows the demograph --
7 the first four bars show the demographics of the hypothetical
8 admitted classes for the years that you had data, correct?

9 **A.** Yes.

10 **Q.** And in each of those models, the percentage of
11 Asian-American applicants that your model predicts would get
12 admitted decreases, correct?

13 **A.** That's correct.

14 **Q.** Okay. And in the -- and when you compare the
15 hypothetical admitted classes, the demographics of that for
16 model 4 to the actual -- the demographics of the actual
17 admitted classes in model 5, those numbers are pretty close,
18 aren't they?

19 MS. ELLSWORTH: Your Honor, there's no model 5. I
20 think the question is a little confusing.

21 MR. HUGHES: Thank you. That was a bad question.
22 Following the compliments of the lawyering, I am sorry. Let
23 me try again.

24 **Q.** So when you compare --

25 THE COURT: There's no such thing as a stupid

1 question.

2 MR. HUGHES: There is such thing as an
3 incomprehensible question, so let me try to ask a
4 comprehensible one, Mr. Hansen.

5 Q. If you look at the demographics of model 4, what that is
6 is the demographics based on the input variables to model 4
7 of the hypothetical admitted classes for the years that you
8 had data, correct?

9 A. I'm sorry. Could you repeat the question? I'm really
10 sorry.

11 Q. Focusing on model 4, what model 4 shows is demographic
12 breakdown, correct?

13 A. It shows the hypothetical one generated by model 4.

14 Q. Okay. And that's for -- it's the hypothetical admitted
15 class for each of the classes that you had the data for,
16 right?

17 A. It would be them all pooled together.

18 Q. All pooled together, right; is that right?

19 A. Yes.

20 Q. And then you compare that to the actual admitted class,
21 correct?

22 A. Yes.

23 Q. And that's what's in the fifth column, correct?

24 A. That's correct.

25 Q. And you pooled all of the class years and got the

1 demographics for those actual admitted classes as reflected
2 in that fifth column, correct?

3 **A.** Yes.

4 **Q.** And then we can compare column 4 to column 5. That's the
5 purpose of this, correct?

6 **A.** Yes.

7 **Q.** And we can see that the demographics of your -- of model
8 4 in terms of race and ethnicity are pretty close to the
9 actual admitted classes for the years that you had data,
10 correct?

11 **A.** Yes. It's not unexpected, so there's a circular element
12 to this in that you're using demographic attributes to model
13 a hypothetical admitted student pool and then comparing them
14 to the actual.

15 **Q.** Yeah, I appreciate that. And you will get to answer your
16 lawyers' questions when it's their turn to ask you questions.

17 My question is, the demographics between these two,
18 the model and the actual, is pretty close, isn't it?

19 **A.** On the attributes being measured, yes.

20 **Q.** And the thing you just said about circular, that's
21 nowhere in this document, is it?

22 **A.** I think the preliminary caveat up there was meant to
23 convey some of the methodological concerns that might come
24 with this.

25 **Q.** Now, if we look at the -- you would agree with me that

1 all -- everything you just said about circular, that doesn't
2 appear anywhere in this document, does it?

3 **A.** It would be covered by the preliminary piece.

4 **Q.** All captured by the word "preliminary." That's your
5 testimony.

6 MS. ELLSWORTH: Your Honor, I'm going to object on
7 argumentative. We can let the witness answers his questions.
8 We've got plenty time of here.

9 THE COURT: You can have the question because I
10 don't think it's unduly argumentative, but let him finish his
11 answer before you ask it, okay?

12 MR. HUGHES: Thank you, Your Honor.

13 **A.** Sorry. Could you repeat the --

14 **Q.** All the testimony you just gave us about circular, that's
15 all captured by the word "preliminary." That's your
16 testimony?

17 **A.** It would convey any methodological concerns I would have
18 about this approach.

19 **Q.** Now, you don't recall having a reaction to the numbers
20 produced by this model, correct?

21 **A.** That's correct.

22 **Q.** Okay. And you do recall showing the information from
23 these models to Dean Fitzsimmons, correct?

24 **A.** In some form, yes.

25 **Q.** And you do not remember Dean Fitzsimmons' reaction upon

1 seeing these numbers, correct?

2 **A.** I don't think so, no.

3 **Q.** Okay. And now turning to page 35 --

4 THE COURT: May I ask you a question about this?

5 Sorry.

6 I know you haven't been here, and I may come pretty
7 close to stupid questions on this graph, but I've been sort
8 of wrestling with it to begin with.

9 Can you -- does this mean that if you take the
10 numbers assigned for each of those four things, are you --
11 can you conclude from that that if you look just at those
12 numbers, you can accurately predict the demographics of the
13 class?

14 THE WITNESS: Demographics on those attributes, so
15 if you were to look at something like income, which isn't
16 included here, it probably wouldn't mirror the actual income
17 distribution of the admitted student class.

18 And same thing with something like geography, where
19 it's entirely feasible that model 4 could have all students
20 from California. I mean, that's on the edge of feasible, but
21 it's -- it wouldn't necessarily mirror the geographic
22 distribution of applicants or admitted students in the true
23 admitted student pool.

24 I apologize, Your Honor. I'm not an expert on
25 statistics.

1 THE COURT: I should be the one who apologizes.

2 The four thing in model -- the three things in
3 models 1, 2 and 3 are things that Harvard assigns a numerical
4 rating to, right? That's where those come from, right?

5 THE WITNESS: I believe so, yes.

6 THE COURT: And so if you run just those numbers
7 and nothing else, you would come out with -- you would expect
8 to see a population in the class similar to model 3, right?

9 THE WITNESS: I'm sorry. Could you --

10 THE COURT: If you put -- academics, legacy and
11 athlete -- well, I shouldn't say legacy. But academics,
12 athlete, extracurricular and personal are all things that the
13 admissions reviewers give a number to, right?

14 THE WITNESS: Yes.

15 THE COURT: That's the input here, right?

16 THE WITNESS: To the model 3, yes.

17 THE COURT: Where does the legacy thing come from?
18 Is that a number? Like, what's the input on that?

19 THE WITNESS: It would be probably a binary flag.
20 So it's basically a yes or no.

21 THE COURT: Okay. And so if you put in academics,
22 the binary flag, the number for athletic, the number for
23 extracurricular and the number for personal and you just
24 based your decisions on those numbers, you would expect that
25 -- the income class to look like model 3, right?

1 THE WITNESS: On these attributes.

2 THE COURT: Just on those objective numbers. I
3 mean, we're hearing that there's other things that go into
4 the process, but if there wasn't anything else going into the
5 process, just the numbers, you would expect the class to look
6 like model 3?

7 THE WITNESS: Theoretically, yes.

8 THE COURT: Okay. I know you don't know who they
9 are, right, so they --

10 THE WITNESS: No.

11 THE COURT: But then, what do you -- what are you
12 putting into model 4 that changes -- what about model 4
13 changes the number?

14 THE WITNESS: It would be the inclusion of those
15 demographic variables, so it would more or less reflect the
16 demographics of the incoming class.

17 THE COURT: So let's just take the number -- let's
18 just take the number for whites. So you go just on the
19 objective numbers, and you would expect the incoming class to
20 be 51 percent white, right?

21 THE WITNESS: This is model 3?

22 THE COURT: Yeah, model 3.

23 So you take just those objective numbers we were
24 talking about, and you expect the class to be 51 percent
25 white, right?

1 THE WITNESS: Thereabouts.

2 THE COURT: What are you putting in that changes it
3 to 44 percent? You're putting in the demograph- -- is that
4 the demographics of the actual class?

5 THE WITNESS: Yes.

6 THE COURT: So then if you're putting in the
7 demographics of the actual class, why is there any difference
8 at all between model 4 and actual?

9 THE WITNESS: So early on, I think on that initial
10 slide, I made what amounts to more or less an arbitrary
11 choice to say an incoming class would be 2100 students. But
12 it's entirely possible over time that that number actually
13 varies year to year, and there's also the potential for just
14 some noise in fitting the models.

15 THE COURT: So the model 4 is always going to look
16 like actual, right?

17 THE WITNESS: I think it should be pretty close, at
18 least on the things we're looking at in the model.

19 THE COURT: Okay. All right. Thank you.

20 If you want to do follow up from that, go ahead.

21 MR. HUGHES: I think we're good, Your Honor.

22 BY MR. HUGHES:

23 **Q.** Turning to page 35, this shows projected admission rates
24 based on the model, correct?

25 **A.** I believe so, yes.

1 Q. And, again, the projected admission rates for Asian
2 applicants goes down from -- keeps going down with every
3 iteration of the model, correct?

4 A. I'm sorry. Could you repeat the question?

5 Q. You can see that there's -- this one is a little harder
6 to look at, but you can see that there's a color that's like
7 brown or olive green that's related to Asian applicants. Do
8 you see that?

9 A. I do, yes.

10 Q. And then you can see there's the line that goes down that
11 reflects the admission rates, correct?

12 A. Yes.

13 Q. And in each iteration of the model, the projected
14 admission rates for Asian applicants goes down, correct?

15 A. Yeah, those hypothetical rates. Yes.

16 THE COURT: Sorry, Mr. Hughes, one more question.

17 MR. HUGHES: Sure.

18 THE COURT: So the percentage -- if you take the
19 actual numbers, which are model 3, and I understand there's
20 other factors that go into it, but if you just take model 3,
21 the percentage of -- the percentage of the Asians and whites
22 goes down by basically the same, right?

23 THE WITNESS: This is model 3 going to model 4?

24 THE COURT: Yeah -- well, yeah. Or actual. I
25 mean, when you start moving in -- is that right?

1 THE WITNESS: They're close-ish. Sorry. I don't
2 know that I could do the math real quickly in my head.

3 THE COURT: Okay. Thank you.

4 Q. Then if we move to slide 36, we have a slide entitled
5 "What have we learned?" Do you see that?

6 A. Yes.

7 Q. And you say, "Once we account for ratings and demographic
8 factors, we can closely predict what the admitted class will
9 look like." Do you see that?

10 A. I do.

11 Q. And you say, "With current data" -- this is your slide,
12 right?

13 A. I'd say likely, yes.

14 Q. And then you say, "With current data, we explain a
15 significant amount of the variation in admission, but further
16 details, especially around the personal rating, may provide
17 further insight," correct?

18 A. Yes.

19 Q. And then you say, "There are a variety of factors a
20 quantitative data is likely to miss, the ratings do not
21 capture," and then you have a list of those, correct?

22 A. Yes.

23 Q. Okay. And you don't say on this slide that the model is
24 unreliable or inaccurate, correct?

25 A. I would have covered that in that first -- with the

1 caveats that go with the models.

2 **Q.** And then look at slide 38. This is an OIR presentation,
3 and I think you've already told us this was in some form
4 shared with Dean Fitzsimmons, correct?

5 **A.** Yes.

6 **Q.** And what OIR is saying here at the end of the analysis in
7 these models, posing some research questions, correct?

8 **A.** Yes.

9 **Q.** And you can see I've got part of page 38 blown up on the
10 screen. Do you see that?

11 **A.** Oh, sorry. Yes.

12 **Q.** And then the third question is, "Is there bias against
13 Asians in college admissions?" Do you see that?

14 **A.** I do.

15 **Q.** And then there's, "Next steps to further address the
16 question of bias. Is there more data to elaborate our
17 understanding of the role of the personal essay and other
18 factors?" Do you see that?

19 **A.** I do.

20 **Q.** Now I want to move on to a different document as
21 Plaintiff's Exhibit 9, and you've got that in your binder.

22 **A.** Is it okay to flip through it?

23 **Q.** Absolutely. Yeah, I was kind of waiting for you. Sorry,
24 Mr. Hansen. I should have communicated that to you. Just
25 let me know when you've kind of taken a look at it.

1 **A.** Okay.

2 **Q.** Take a look at P9.

3 **A.** Yes.

4 **Q.** And you saw in there, if you looked at, like, page 11,
5 you probably saw the model that we just talked about, right?

6 **A.** Yes, in draft form.

7 **Q.** And P9, Plaintiff's Exhibit 9, is one of the iterations
8 concerning whether Harvard's admissions process disadvantages
9 Asians, correct?

10 **A.** It would be an early draft of some of the content that
11 went into that later presentation.

12 MR. HUGHES: At this point, Your Honor, I'd like to
13 move for the admission of P9.

14 MS. ELLSWORTH: No objection.

15 THE COURT: P9 comes in.

16 MR. HUGHES: At long last.

17 THE COURT: And the motion is mooted?

18 MR. HUGHES: The motion is mooted. I'm told I get
19 a treat back at the war room tonight.

20 (Exhibit P9 admitted into evidence.)

21 MR. LEE: Your treat is we don't have to respond.

22 MR. HUGHES: Fair enough, Mr. Lee.

23 **Q.** Now, as a general matter, this document was connected to
24 the research you were doing related to the concerns raised in
25 the Unz article, right?

1 **A.** Related to the Unz article, yes.

2 **Q.** Now, let's just look at a few pages of P9. Turn to page
3 5, if you will.

4 **A.** Okay.

5 **Q.** Do you see page 5 in your binder? And I've got it up on
6 the screen.

7 And what this shows is that -- some differences
8 between white applicants and Asian applicants, correct?

9 **A.** Yes.

10 **Q.** And if the bars are going to the -- do you see where I've
11 got highlighted the zero line?

12 **A.** I do.

13 **Q.** And if the bars are going to the right of the zero line,
14 that means Asians are doing better in the categories that are
15 listed here; and if the bars are going left, that means white
16 applicants are doing better, correct?

17 **A.** The right would say the average would be higher for
18 Asians and the left would be higher for white.

19 **Q.** For white applicants?

20 **A.** Yes.

21 **Q.** Okay.

22 **A.** Sorry. Yes.

23 **Q.** So we have, on average, the Asian applicants are higher
24 for SAT II average, SAT average and alumni 2 rating, correct?

25 **A.** Yes.

1 **Q.** And then for the next four categories, alumni rating 1,
2 guidance rating, teacher rating 2 and teacher rating 1. And
3 for the first three of those, white applicants do a little
4 bit better on average; and for the last one, teacher rating
5 1, the Asian applicants do a little bit better on average.
6 Correct?

7 **A.** Yes.

8 **Q.** And those differences are much smaller than the other
9 differences that we see on the screen, correct?

10 **A.** They're smaller, yes.

11 **Q.** And then we see the one category where the white
12 applicants do, you know, significantly better or better is
13 the personal rating, correct?

14 **A.** I'd just say that the personal ratings on average are
15 higher for white applicants.

16 **Q.** And it looks like that's about 1. -- or .13 standard
17 deviations on average, correct?

18 **A.** That sounds about right.

19 **Q.** And then we can look down and see for extracurricular and
20 academic, the Asian applicants on average are better than the
21 white applicants, correct?

22 **A.** They have a higher average rating, on average.

23 **Q.** And if we look down here in the notes, you've got some
24 different notes at the bottom of the slide, correct?

25 **A.** Yes.

1 **Q.** And the first one is that you excluded legacies and
2 athletes, correct?

3 MR. HUGHES: Bless you, Your Honor.

4 THE COURT: Thank you.

5 **A.** Yes.

6 **Q.** And the reason that you remove athletes and legacies is
7 because those are attributes that have been described as
8 favoring white students, correct?

9 **A.** Yes.

10 **Q.** And then your other notes you've got that you didn't have
11 the ratings for all the years, so there's -- the number of
12 applicants differs for each rating test score. Do you see
13 that?

14 **A.** Yes, I do.

15 **Q.** And what that means is there were a different number of
16 people that you had data for for certain variables, correct?

17 **A.** Certain -- yes. Essentially people, years, some years we
18 didn't have ratings.

19 **Q.** You averaged that all out to get your bar graph, right?

20 **A.** It would be the pool of whatever we had available.

21 **Q.** And then you've -- to the last bullet point is what we
22 already talked about, the differences that we see here are in
23 standard deviations, correct?

24 **A.** Yes.

25 **Q.** Now let's look at page 8. Here we have -- and let me

1 just remind you, I'm going to show you pages 10 and 11 real
2 quickly just to orient everybody.

3 You see page 10 we have a kind of description
4 similar but not perfectly identical to what we saw in P12,
5 describing your work in putting together this model, correct?

6 **A.** Yeah, it looks like an earlier draft.

7 **Q.** And if you look down at the bottom, the input variables
8 to the four models are the same here as they were in P12,
9 correct?

10 **A.** They should be, yes.

11 **Q.** And this bar graph is the same as in P12, correct?

12 **A.** I think so, without looking.

13 **Q.** And so we're not going to go through it twice.

14 **A.** Yeah.

15 **Q.** I want to turn back to page 8 where you're reporting some
16 odds ratios for the main effect of the logistic model.

17 Do you have page 8 in front of you?

18 **A.** Yes.

19 **Q.** Okay. And then we see -- and these are odds ratios
20 related to chance of -- whether something is positively or
21 negatively associated with admissions, correct?

22 **A.** With a probability of admission, yes.

23 **Q.** So, for example, having a higher personal rating is
24 favorably associated with the chance of admission, correct?

25 **A.** Yes, it's a positive relationship.

1 Q. And there's a positive relationship, for example, between
2 being African-American and admission to Harvard, correct?

3 A. In this model, yes.

4 Q. Okay. And it actually shows that the positive
5 relationship between being African-American and admission to
6 Harvard is greater than the positive relationship between
7 being Hispanic and admission to Harvard, correct?

8 A. I'm sorry. Could you repeat the question?

9 Q. Let me try to --

10 A. I'm sorry.

11 Q. It's a lot of words on the screens. Do you see the two
12 things I've got highlighted here on the screen?

13 A. I do.

14 Q. My question is, what this shows is that being
15 African-American is more positively associated with admission
16 to Harvard than the Hispanic variable, correct?

17 A. In this particular model, yes.

18 Q. And then if we get down -- and the line here, the line
19 here, if you're on the -- let me just ask you this: Down
20 here where you see "Asian," being Asian in this model is
21 negatively associated with admission to Harvard, correct?

22 A. In this model, yes. I believe one is sort of equivalent
23 of zero.

24 Q. I'm sorry?

25 A. I believe one is the equivalent of being zero on this

1 display being negative, anything to the left of one would be
2 negative.

3 **Q.** So just to be clear, being Asian is negatively associated
4 with the probability of admissions in this model, correct?

5 **A.** Yes.

6 **Q.** Okay. You would describe Plaintiff's Exhibit 9 as
7 providing evidence that Asians were disadvantaged in the
8 admissions process, but you're not sure whether it is
9 intentional, correct?

10 **A.** I'm sorry. Could you repeat the question?

11 **Q.** You would describe this exhibit as providing evidence
12 that Asians were disadvantaged in the admissions process, but
13 you're not sure whether it's intentional, correct?

14 **A.** It could provide evidence, but it's certainly not an
15 exhaustive look at all the factors in the admissions process.

16 THE COURT: What do the class numbers mean on this?
17 Why are those in there?

18 THE WITNESS: So it would be an attempt to control
19 for time. So essentially you'd consider the class of -- pick
20 one, 2008, in isolation from 2012. So as it gets -- over
21 time there are more applications, finite number of seats, so
22 over time it would get harder. You would have a lower
23 probability of admission.

24 So an earlier class, because there were fewer
25 applications, might have a higher probability of admission.

1 I realize looking at it they're not necessarily perfectly in
2 order, but that's the general idea.

3 THE COURT: So how would you, like -- how would you
4 say that? Like, being in the class of 2016 is -- you have a
5 -- if you're in the class of 2016, you have less than one
6 probability of getting in?

7 THE WITNESS: I'd say negatively associated. And
8 this is in part due to -- it's been a while since I've done
9 this kind of work. These are also relative to some reference
10 group, which I'm not quite sure what that would be in this
11 instance.

12 THE COURT: What does it mean for a whole class to
13 be negatively associated with admissions?

14 THE WITNESS: It's compared to some reference
15 point. So it might have been either the earliest class in
16 this data so relative to the class -- I don't know if 2007's
17 in here, maybe that's the reference here -- but relative to
18 the class of 2007, being in the class of 2016 would be
19 negatively associated with the probability of admission.

20 THE COURT: So does this have anything to do
21 with -- it doesn't have anything to do with the absolute
22 number of applications; you're just saying the more
23 applications there are, the harder it gets?

24 THE WITNESS: Essentially, Your Honor, that sounds
25 right.

1 MR. HUGHES: Your Honor, were those all your
2 questions on this part?

3 THE COURT: Yeah.

4 MR. HUGHES: I'm going to try to ask a follow-up
5 question.

6 BY MR. HUGHES:

7 Q. Based on your familiarity with the data relating to
8 Harvard admissions, over time, generally speaking, more
9 people apply to Harvard College, at least in this timeframe,
10 right?

11 A. I think that's true without being 100 percent sure. That
12 sounds --

13 Q. Year after year --

14 A. -- generally right.

15 Q. And just as a matter of -- and you're comparing these
16 variables that you've got here to a baseline, correct?

17 A. Yes.

18 Q. And your baseline might be, I think you said, might be
19 2007, correct?

20 A. Without -- I wouldn't know for sure, but that would seem
21 right, based on the years of data described.

22 Q. And then if a whole bunch more people applied to Harvard
23 in 2016 instead of 2007, just, by virtue of the bigger class,
24 your odds are lower of getting in in '16 as in '07 just
25 because more people applied. That's just the basic math,

1 correct?

2 **A.** I think so, yes.

3 THE COURT: But you can't say, like -- this doesn't
4 reflect the fact that there's fewer people with high personal
5 ratings so more of them get in?

6 THE WITNESS: I'm sorry. Could you repeat the
7 question?

8 THE COURT: It's not a percentage, right? Like,
9 this doesn't reflect that there's -- could you extrapolate
10 from this that there's fewer high personal ratings so a
11 bigger percentage of them get in or there are fewer
12 African-American applicants so a bigger percentage of them
13 get in? Can you read that like that, or no?

14 THE WITNESS: I don't believe so, but I could be
15 mistaken.

16 BY MR. HUGHES:

17 **Q.** I'll just return to the question that I asked you before,
18 but I am not sure that the record is clear.

19 You would describe P9 as providing evidence that
20 Asians were disadvantaged in the admissions process, but you
21 were not sure whether it was intentional, correct?

22 **A.** It could provide evidence that Asians are disadvantaged
23 in the admissions process. However, it's not necessarily a
24 comprehensive look at all the factors considered in
25 admissions.

1 **Q.** And, in fact, you cannot eliminate the possibility that
2 bias against Asians explained the fact that being Asian is
3 negatively associated with being admitted to Harvard,
4 correct?

5 **A.** I'm sorry. Could you repeat the question?

6 **Q.** You cannot eliminate the possibility that bias against
7 Asians explained the fact that being Asian is negatively
8 associated with being admitted to Harvard, correct?

9 **A.** I can't. However, these models don't establish causal
10 relationships between any of these inputs on the left-hand
11 side and in admissions outcome.

12 **Q.** Now, you met with Dean Fitzsimmons to discuss your
13 analysis of race in the admissions process on more than one
14 occasion, correct?

15 **A.** I think that would have been a topic.

16 **Q.** On more than one occasion, correct?

17 **A.** Potentially, yes.

18 **Q.** And the other people that you remember being at those
19 meetings were Ms. Bever and Dr. Driver-Linn, correct?

20 **A.** That sounds right, yes.

21 **Q.** And you don't recall any reaction by Dean Fitzsimmons
22 when he learned about OIR's analysis into whether Asians were
23 being disadvantaged in Harvard's admissions process, correct?

24 **A.** I think the analysis of admissions preferences was
25 probably presented with a docket of other things, so I'm not

1 recalling specific reactions.

2 **Q.** And you're not aware of anyone ever criticizing the
3 analysis that you did into whether Harvard's admissions
4 process disadvantaged Asians, correct?

5 **A.** I don't know that any of these analyses would have been
6 circulated beyond our office and Dean Fitzsimmons.

7 **Q.** Yes. But just so the record is clear, you're not aware
8 of anyone ever criticizing the analysis that you did into
9 whether Harvard's admissions process disadvantaged Asians,
10 correct?

11 **A.** No, but I don't think any of these analyses were
12 seriously vetted by anyone outside of our office.

13 **Q.** And you don't recall anyone at Harvard taking any action
14 in response to OIR's analysis into whether Asians were being
15 disadvantaged in Harvard's admissions process, correct?

16 **A.** I'm sorry. Could you repeat the question?

17 **Q.** You don't recall anyone at Harvard taking any action in
18 response to OIR's analysis into whether Asians were being
19 disadvantaged at Harvard's admissions process, correct?

20 **A.** I don't know that I'd be aware of any action taken or not
21 taken due to any of the admissions analyses we're doing.

22 **Q.** And you're not aware of any, right?

23 **A.** I'm not aware of any action.

24 **Q.** And you're not aware of any changes in the admissions
25 process that occurred as a result of OIR's analysis into

1 whether Asians were being disadvantaged in the admissions
2 process, correct?

3 **A.** I'm sorry. Could you repeat the question?

4 **Q.** You're not aware of any changes in the admissions process
5 that occurred as a result of OIR's analysis into whether
6 Asians were being disadvantaged in the admissions process,
7 correct?

8 **A.** I'm not aware of any changes as a result of any of these
9 analyses.

10 MR. HUGHES: No further questions.

11 MS. ELLSWORTH: May I proceed, Your Honor?

12 THE COURT: Yes.

13 EXAMINATION BY MS. ELLSWORTH:

14 **Q.** Good morning, Mr. Hansen.

15 **A.** Good morning.

16 **Q.** Mr. Lee, can I have Plaintiff's Exhibit 9 up on the
17 screen, please.

18 And you can turn to Tab 1 in the binder that we
19 just gave you that has Plaintiff's Exhibit 9 in it, first
20 tab. Are you there?

21 **A.** I am.

22 **Q.** All right. Mr. Hughes was asking you some questions
23 about Plaintiff's Exhibit 9 just now. Do you remember that?

24 **A.** I do, yes.

25 **Q.** How would you describe Plaintiff's Exhibit 9?

1 **A.** Essentially as either my working notes or even like lab
2 notes. So as I was familiarizing myself with admissions
3 data, essentially just drawing exhibits as a way of
4 understanding the numbers I was working with.

5 **Q.** Is Plaintiff's Exhibit 9 a presentation of some sort?

6 **A.** I don't believe so, no.

7 **Q.** Is it a final work product of OIR?

8 **A.** No. I mean, there are typos on the very first page.

9 **Q.** Did you show Plaintiff's Exhibit 9 to any of your
10 colleagues in the Office of Institutional Research?

11 **A.** I doubt I would have, given the typos. I would have
12 probably proofread.

13 **Q.** Did you show Plaintiff's Exhibit 9 to Dean Fitzsimmons?

14 **A.** I'd say very unlikely; again, given the typos.

15 **Q.** In response to some of the questions from Mr. Hughes, you
16 described your work at OIR as relating to the factors in
17 Harvard admissions process. Do I have that generally right?

18 **A.** Some of the work, yes.

19 **Q.** And Mr. Hughes characterized the work that you did at OIR
20 as an analysis into whether Asians were disadvantaged in the
21 admissions process. Do you remember that?

22 **A.** Yes.

23 **Q.** All right. How would you characterize the two work
24 products that Mr. Hughes showed you this morning, Plaintiff's
25 Exhibit 9 and Plaintiff's Exhibit 12?

1 **A.** So probably a bit broader. So looking at a number of
2 different factors used in the admissions process, not just
3 race and ethnicity.

4 **Q.** So you don't agree with Mr. Hughes' characterization of
5 the work?

6 **A.** No.

7 **Q.** Mr. Hughes asked you some questions about your deposition
8 testimony.

9 Do you remember that?

10 **A.** I do.

11 **Q.** And he showed you some deposition testimony?

12 **A.** Yes.

13 **Q.** The questioner at your deposition described OIR projects
14 in language similar to Mr. Hughes, right?

15 **A.** Yes.

16 **Q.** Do you agree with the way the questioner at your
17 deposition characterized the work of OIR?

18 **A.** I do not.

19 **Q.** Did any of your work at OIR show bias or discrimination
20 against Asian-American applicants?

21 **A.** No. Those would imply causal inference, and that's not
22 something I have the training to do.

23 **Q.** So let's talk a little bit about your background,
24 Mr. Hansen. Do you consider yourself an expert in
25 statistics?

1 **A.** No.

2 **Q.** Do you consider yourself an expert in statistical
3 modeling?

4 **A.** No.

5 **Q.** In your professional career, when is the first time that
6 you ever did a logistic regression project?

7 **A.** As far as I can recall, mostly associated with these
8 analyses.

9 **Q.** So the work in Plaintiff's Exhibit 12 that we were
10 looking at earlier?

11 **A.** Or P9.

12 **Q.** Plaintiff's Exhibit 9?

13 **A.** I think so, yes.

14 **Q.** Okay. And when is the last time that you did a logistic
15 regression analysis?

16 **A.** While employed by Harvard. So sometime in the spring or
17 early summer of 2013.

18 **Q.** Do you do any statistical analysis as a part of your work
19 in your current position?

20 **A.** Not really, no.

21 **Q.** Can you look, please, in Tab 2 of your binder.

22 **A.** Okay.

23 **Q.** Do you have in front of you Plaintiff's Exhibit 46?

24 **A.** I do.

25 **Q.** What is this document?

1 **A.** It looks like a -- either email or draft of an email
2 likely from myself to Erica Bever with essentially some
3 follow-up analysis that had been requested.

4 **Q.** Do you believe that you drafted this email or portions of
5 an email?

6 **A.** It seems pretty likely.

7 MS. ELLSWORTH: Your Honor, I move to admit
8 Plaintiff's 46.

9 MR. HUGHES: No objection.

10 THE COURT: Admitted.

11 (Exhibit P46 admitted into evidence.)

12 **Q.** Mr. Hansen, if you can just look back at Plaintiff's 9,
13 which is the first tab in your binder. And in particular,
14 please look at slide 5 of that exhibit.

15 **A.** Okay.

16 **Q.** Did you show slide 5 of Plaintiff's Exhibit 9 to Dean
17 Fitzsimmons?

18 **A.** I don't think so.

19 **Q.** Can you look at slide 8 of Plaintiff's Exhibit 9. Did
20 you show slide 8 of Plaintiff's Exhibit 9 to Dean
21 Fitzsimmons?

22 **A.** Again, I don't think so.

23 **Q.** And look at slide 9 of Plaintiff's Exhibit 9, please.
24 Did you show slide 9 of Plaintiff's Exhibit 9 to Dean
25 Fitzsimmons?

1 **A.** I don't think so.

2 **Q.** All right. Let's -- Mr. Lee, if we could have
3 Plaintiff's Exhibit 12, please, which is at Tab 4 in your
4 binder, Mr. Hansen. Are you there?

5 **A.** Yes.

6 **Q.** All right. And you referenced in response to some
7 questions from Mr. Hughes that there were several projects
8 contained within this exhibit. Do you recall that testimony?

9 **A.** I do.

10 **Q.** So let's focus on slides 32 through 34 of Plaintiff's
11 Exhibit 12, please. These are the -- I'll wait until you're
12 there.

13 **A.** Sorry.

14 **Q.** No. Take your time.

15 **A.** Okay.

16 **Q.** This is the modeling exercise you were discussing with
17 Mr. Hughes, right?

18 **A.** Yes.

19 **Q.** And you created these models, right?

20 **A.** I believe so, yes.

21 **Q.** Just so the record is clear, these are four separate
22 models, correct?

23 **A.** Yes.

24 **Q.** Did you consult with the Harvard admissions office in
25 creating these four separate models?

1 **A.** I did not.

2 **Q.** What was the goal of the four models that are shown on
3 slides 32 through 34 of Plaintiff's Exhibit 12?

4 **A.** It's laid out on slide 32. So using various ratings,
5 characteristics, how well can we simulate the demographic
6 composition of an admitted students pool, using different
7 combinations of those inputs.

8 **Q.** Let's take a look at slide 33, please, of Plaintiff's 12.
9 This describes the factors that were included in each of the
10 four models, right?

11 **A.** The inputs, yes.

12 **Q.** The inputs, thank you. And you discussed model 1 with
13 Mr. Hughes. Do you remember that?

14 **A.** I do, yes.

15 **Q.** What are the inputs to model 1?

16 **A.** In this instance, so the inputs would be academic index
17 and academic rating.

18 **Q.** Are those the only factors used in the Harvard admissions
19 process?

20 **A.** I don't believe so, no.

21 **Q.** Are those the only two academic considerations in the
22 Harvard admissions process?

23 **A.** I don't believe they are.

24 **Q.** And, again, did you confer with the admissions office
25 before selecting these two variables?

1 **A.** I did not, no.

2 **Q.** Can you please describe for the court the process that
3 you used to conduct the logistic regression using these two
4 factors in model 1?

5 **A.** Sure. So you take those two factors as inputs, and as an
6 output, you take an actual admissions outcome. You'd fit a
7 series of -- or you'd fit a single logistics regression
8 model. From that model you can get what are called fitted
9 probabilities. That would be estimates at a given
10 applicant's probability of admission; and in this instance,
11 based on these two factors.

12 And then from there I took and rank-ordered the
13 data essentially by that fitted probability. And for each
14 class year I took the 2100 students with the highest
15 probability of admission in this simulation and called that
16 my entering class.

17 So in total, these reflect probably about 21,000
18 kind of simulated admits.

19 **Q.** And just to clear up something that Mr. Hughes asked, did
20 you run each model on a year-by-year basis?

21 **A.** I fit a single model for everyone and then generated the
22 probabilities for everyone but then year by year selected the
23 top 2100 for each year.

24 **Q.** So for each of the years of data you analyzed, you
25 selected the top 2100 for each of these years. Do I have

1 that right?

2 **A.** Yes.

3 **Q.** The output that's shown on slide 34 combines them
4 altogether, correct?

5 **A.** It would be the demographic composition of, essentially,
6 so model 1 -- actually, all four of them of ten kind of
7 simulated entering classes. So about 21,000 people.

8 **Q.** But the way that you constructed the models was on a
9 year-by-year basis?

10 **A.** The model itself, so the fitting part would have been
11 against all the data. But the actual selection, so the
12 slicing off the top 2100, would have been year by year.

13 **Q.** Why did you choose 2100 to -- as the cutoff?

14 **A.** It was an arbitrary sort of ballpark that was close to
15 the actual -- or I think the actual admitted class size.

16 **Q.** Do you know what the actual admitted class size is for
17 any of those years in question?

18 **A.** No, I don't.

19 **Q.** So after you rank-ordered the 2100 for each year of the
20 model, what was the next step that you took?

21 **A.** It would have been to look at the demographics of that
22 hypothetical admitted student class.

23 **Q.** And so from model 1, that shows the demographics, that
24 is -- withdrawn.

25 On slide 34 you had the output for model 1 on the

1 far left of the slide, correct?

2 MS. ELLSWORTH: God bless you, Your Honor.

3 **A.** It would be the demographic composition of that
4 hypothetical admitted class.

5 **Q.** Why is it a hypothetical admitted class, Mr. Hansen?

6 **A.** These are essentially guesses at the individual level as
7 to whether someone got in or not. The individuals that are
8 reflected in this left-most model may not have actually
9 gotten into Harvard College.

10 **Q.** So let's go back, please, to slide 33, Mr. Lee, and look
11 at model 3.

12 How did the steps that you just described with
13 reference to model 1 compare to the steps that you took with
14 model 3?

15 **A.** They would be the same, except they would add an
16 additional four factors: so legacy, athlete, personal rating
17 and extracurricular rating.

18 **Q.** And then after you used those additional four factors,
19 what were the next steps you took?

20 **A.** So you'd get a single -- you'd fit a single model, you'd
21 generate fitted probabilities for every record in the
22 dataset, and then you'd go class by class or year by year
23 selecting the top 2100 or the top -- the 2100 applicants with
24 the highest probability of admission, and constructing an
25 essentially hypothetical admitted student pool from that.

1 **Q.** And, again, the 2100 with the highest probability of
2 admission would be using just those six factors listed in
3 model 3?

4 **A.** Yes.

5 **Q.** Are there factors beyond those six factors listed in
6 model 3 that are used in the Harvard admission process?

7 **A.** I believe so, yes.

8 **Q.** And looking next at model 4 here on slide 33, what are
9 the steps that you took with model 4 as compared to the steps
10 you took with reference to the other models?

11 **A.** I'm sorry. Could you repeat the question?

12 **Q.** Sure. Let's step back one step. What are the factors
13 that are included in model 4?

14 **A.** It would be eight. So academic index, academic rating,
15 legacy status, athlete, personal rating, extracurricular
16 rating, gender and ethnicity.

17 **Q.** And how did the steps -- how did the steps that you just
18 described for models 1 and models 3 -- model 3 compare to the
19 steps you took to create model 4?

20 **A.** They would be the same. They just include those two
21 additional factors.

22 **Q.** Mr. Lee, can we please pull up DD 7.2.

23 Mr. Hansen, do you see in front of you DD 7.2 on
24 the screen?

25 **A.** Oh, sure. I do, yes.

1 **Q.** And does DD 7.2 have the bar showing the racial breakdown
2 of the actual admitted student pool from slide 34 of
3 Plaintiff's Exhibit 12?

4 **A.** Yes, it does.

5 **Q.** Now, Mr. Lee, can we have DD 7.3, please.

6 All right. On the left of DD 7.3, Mr. Hansen, do
7 you see the list of inputs to model 4 from slide 33 of
8 Plaintiff's Exhibit 12?

9 **A.** I do, yes.

10 **Q.** Do you see the arrow at the bottom of DD 7.3?

11 **A.** I do, yes.

12 **Q.** What does that arrow at the bottom of the DD 7.3 show?

13 **A.** Essentially the circular nature of some of this in that
14 we're using the actual admissions outcomes and demographics
15 of an admitted student class to predict or to create a
16 hypothetical admitted student class.

17 **Q.** Mr. Lee, can we have DD 7.4, please?

18 So on DD 7.4, Mr. Hansen, do you see the bar
19 showing the results of model 4 from slide 34 of Plaintiff's
20 Exhibit 12?

21 **A.** I do, yes.

22 **Q.** Following up on some of the court's questions about the
23 difference between model 4 and the actual, why is there a
24 difference between these two bars as shown on DD 7.4?

25 **A.** So it could be a mix of my arbitrary choice of 2100

1 admitted students when in reality there's probably some
2 variation year to year in how many students are admitted.
3 And there's also the possibility for noise in the model.

4 **Q.** Would the output of model 4 have been closer -- look more
5 like the actual bar if you had used the exact number of
6 admitted students from the years under analysis?

7 **A.** It seems likely, but I can't be sure.

8 **Q.** And can you just remind us again why model 4 so closely
9 resembles the racial breakdown of the actual admitted
10 students pool?

11 **A.** Because we're using the actual admitted students pool as
12 a predictor.

13 **Q.** So are you using the inputs, the same inputs as you're
14 using as an output?

15 **A.** Yes.

16 THE COURT: That's not true of the first three
17 models, just of the fourth one, right?

18 THE WITNESS: Yes, because race and ethnicity and
19 gender would not be a part of those first three.

20 THE COURT: But those first three don't have that
21 same circular component, right?

22 THE WITNESS: They would if you were to look at the
23 proportions of legacy.

24 So, for instance, for model 2, if you looked at the
25 proportions of -- if the bar graph did, you know, the percent

1 legacy, it should look close-ish to the actual proportion of
2 legacy students in the actual incoming -- or the actual
3 admitted class.

4 THE COURT: So for each factor that you add in,
5 you're taking the percentage from the actual class? Like,
6 what about academic rating?

7 THE WITNESS: It's not quite a percentage because
8 this is happening at the individual level, but when you
9 aggregate it up, the percentages should be, I believe, pretty
10 close.

11 Q. So just following up on the court's question, for each of
12 the models you had information about the actual students who
13 were admitted, correct?

14 A. Yes.

15 Q. So when you ran model 1, the factors included were
16 academic index, right?

17 A. Yes.

18 Q. Academic rating?

19 A. Yes.

20 Q. And then the actual admissions outcomes for the students
21 under -- for those years?

22 A. Yes.

23 Q. And that's the same for the other three models as well?

24 A. So for the other three, the things listed would be the
25 inputs and the output that we'd be using would be the

1 actual -- or we'd be using as another portion of the actual
2 admissions decision.

3 **Q.** Mr. Hansen, do you know whether the exercise in models 1
4 through 4 is the right way to attempt to model the admissions
5 process of Harvard College?

6 **MR. HUGHES:** Your Honor, I'm going to object. This
7 is -- we're getting into the territory of undisclosed expert
8 opinion right here.

9 **THE COURT:** You can get that, but you need to
10 rephrase the question.

11 **MS. ELLSWORTH:** Okay.

12 **Q.** Was your goal in creating models 1 through 4 to attempt
13 to model the actual admissions process at Harvard College?

14 **A.** No.

15 **Q.** Did you speak with anyone in the office of admissions
16 about how one might attempt to model the actual admissions
17 process at Harvard College?

18 **A.** No.

19 **Q.** Do models 1 through 4 in Plaintiff's Exhibit 12 attempt
20 to model the actual admissions process at Harvard College?

21 **A.** I'm sorry. Could you repeat the question?

22 **Q.** Sure. Do models 1 through 4 in Plaintiff's Exhibit 12
23 attempt to model the actual admissions process at Harvard
24 College?

25 **A.** No.

1 **Q.** Does Plaintiff's Exhibit 12 evaluate whether there is
2 discrimination or bias in Harvard College admissions?

3 **A.** They'd have no way of doing that. That implies a causal
4 relationship between any of the inputs and an actual
5 admissions decision, which is not something, as far as I
6 know, any of these techniques can actually get at.

7 THE COURT: Tell me again what these models do show
8 then.

9 THE WITNESS: They'd essentially give you
10 hypothetical admitted student pools if you considered
11 different factors, if you had admissions regimes that use
12 different factors in making a decision.

13 THE COURT: I hear you saying that it shows -- that
14 it shows hypothetical admitted students and that has some
15 meaning, but then I hear you say that because the input and
16 the output are the same that it doesn't have any meaning.
17 Can you parse that for me?

18 THE WITNESS: Sorry, Your Honor. I'm just thinking
19 through.

20 I think -- I'm not sure I'd argue it has no
21 meaning. It's sort of when you're looking at -- so if you're
22 looking at race/ethnicity as predictors -- if you're looking
23 at the demographic composition of a pool using race/ethnicity
24 as predictors, that's a little less useful. But if you're
25 looking at the demographic composition of a pool where race

1 and ethnicity are not factors or legacy and athlete are not
2 factors, or pick whichever one you'd like to remove, that is
3 potentially useful.

4 THE COURT: Useful how?

5 THE WITNESS: You can get a sense of what an
6 admitted class might look like if you're to use only a
7 handful of factors. I mean, subject to the fact that this is
8 just a small number of potential inputs.

9 MS. ELLSWORTH: Can I proceed?

10 Q. Mr. Hansen, you discussed with Mr. Hughes the fact that
11 you showed some of the work product to Dean Fitzsimmons that
12 we've discussed today. Do you recall that?

13 A. I do, yes.

14 Q. And you recall showing the models in Plaintiff's Exhibit
15 12 to Dean Fitzsimmons; is that right?

16 A. In some form, yes.

17 Q. Did you tell Dean Fitzsimmons that models 1 through 4
18 showed bias or discrimination against Asian-American
19 applicants?

20 A. No. I wouldn't make that claim.

21 Q. Did you tell anyone at OIR that models 1 through 4 showed
22 bias or discrimination against Asian-American applicants?

23 A. No.

24 Q. Did you tell anyone at all that models 1 through 4 showed
25 bias or discrimination against Asian-American applicants?

1 **A.** No.

2 **Q.** Why not?

3 **A.** It's not a conclusion that this type of analysis could
4 support.

5 **Q.** In 2013 when you were working on models 1 through 4, did
6 you ever conclude that any of your work at OIR showed
7 discrimination against Asian-American applicants?

8 **A.** No.

9 **Q.** Do you recall, Mr. Hansen, looking at Plaintiff's Exhibit
10 16 that you've got in front of you that Mr. Hughes showed
11 you? It's the loose piece of paper on the desk there.

12 **A.** Oh, yes.

13 **Q.** And in that, in Plaintiff's Exhibit 16, you asked that
14 the word "bias" be changed. Do you see that?

15 **A.** I do.

16 **Q.** Why did you suggest changing the word "bias" in the
17 presentation?

18 **A.** Bias implies a causal relationship between really any of
19 the inputs and an admissions decision, and that's not
20 something that, as far as I know, these techniques can
21 establish.

22 **Q.** And it's not something that you think the models 1
23 through 4 established, correct?

24 **A.** That's correct.

25 **Q.** Can you look back at Plaintiff's Exhibit 12, please.

1 That should be Tab 4, I think.

2 **A.** Okay.

3 **Q.** And looking again at slide 34, does the bar showing the
4 output of model 1 suggest what the demographics of the class
5 would look like if only those factors were included in
6 Harvard College admissions?

7 **A.** I'm sorry. Could you repeat the question?

8 **Q.** Certainly. The output of model 1, the left bar on the
9 screen, does that suggest what the demographics of the
10 Harvard College class would look like if those were the only
11 two factors considered in admission?

12 **A.** Yes.

13 **Q.** And looking at models 2 and 3, do models 2 and 3 suggest
14 that as you add more factors to the process, the demographics
15 change?

16 **A.** Yes.

17 MS. ELLSWORTH: No further questions.

18 Thank you, Mr. Hansen.

19 Oh, before -- Your Honor, I'd move to admit P16
20 since we've talked about it.

21 MR. HUGHES: No objection.

22 THE COURT: It's admitted.

23 (Exhibit P16 admitted into evidence.)

24 MR. HUGHES: Your Honor, I do have some follow up,
25 but I need to get set up.

1 THE COURT: You want to break or do you want to --
2 either one is fine. You can set it up or --

3 MR. HUGHES: A break will be great.

4 THE COURT: You want to break until 11:00? That's
5 fine. You want to break until 11:00?

6 MS. ELLSWORTH: That's fine.

7 THE COURT: Okay.

8 (Recess taken 10:50 a.m. - 11:01 a.m.)

9 RE-EXAMINATION BY MR. HUGHES:

10 MR. HUGHES: Your Honor, may I proceed?

11 THE COURT: Yes.

12 **Q.** All right. Mr. Hansen, briefly, can you turn to, in my
13 binder there, Plaintiff's Exhibit 9? Got that in front of
14 you?

15 **A.** I do, yes.

16 **Q.** Dean Fitzsimmons testified, sir, that he recognized this
17 document. You don't have any reason to doubt that he saw it,
18 do you?

19 MS. ELLSWORTH: Your Honor, I'd object on
20 foundation grounds and mischaracterization of prior
21 testimony. We were all here.

22 MR. HUGHES: I'll withdraw it.

23 THE COURT: That's sustained.

24 **Q.** Let's move on to Plaintiff's 46. Now, Ms. Ellsworth
25 showed this to you briefly.

1 **A.** I'm sorry. Which binder is this?

2 **Q.** I'm sorry. This would be in your binder that Harvard's
3 lawyers gave you behind Tab No. 2.

4 **A.** Okay. Thank you.

5 **Q.** Got that in front of you, Mr. Hansen?

6 **A.** I do, yes.

7 **Q.** Okay. And so in this you told Ms. Ellsworth that this is
8 an email or a note that you wrote to Erica Bever, right?

9 **A.** I did so, yes.

10 **Q.** She was your boss, right?

11 **A.** Yes.

12 **Q.** And you're accurate when you write -- in your
13 communications with your boss, correct?

14 **A.** I believe so.

15 **Q.** Okay. And the first sentence of your note to Ms. Bever
16 is, "Here is the follow up to Fitz' question regarding a
17 low-income Asian interaction." Do you see that?

18 **A.** I do.

19 **Q.** And Dean Fitzsimmons has been here. He's commonly
20 referred to as Fitz, correct?

21 **A.** Yes.

22 **Q.** Okay. And so what this is is you're writing your boss
23 following up on a question that Dean Fitzsimmons had about
24 interacting -- being Asian with being low income, correct?

25 **A.** Yes.

1 Q. And "interaction" is a term that's used in logistical
2 regression models. You can interact different variables,
3 right?

4 A. It would be the joint affect of essentially both at the
5 same time.

6 Q. That's something you can do in logistic regression
7 models; you can interact variables, right?

8 A. Yes.

9 Q. We're not going to get into the nitty-gritty of that, but
10 apparently Dean Fitzsimmons has asked you to interact some
11 variables in a logistic regression model, correct?

12 A. I don't know that their request would have been that
13 specific.

14 Q. Okay. So now let's look at page 2 of this. And you see
15 you're talking in this note to your boss about "coefficients
16 for a logistic regression model." Do you see that?

17 A. In the text?

18 Q. I'm on page 2.

19 A. I see a table, yes.

20 Q. You see a table that's entitled "Coefficients for
21 Logistic Regression Model," correct?

22 A. Yes.

23 Q. And the way that -- I'll represent to you that this is a
24 different model than P12, but the way these logistic
25 regression models work is that you identify variables that

1 you want to use in your model. That's one thing you do,
2 right?

3 **A.** As inputs, yes.

4 **Q.** And then you calculate the relative importance of those
5 variables, correct?

6 **A.** I'm not sure how to describe it. You get -- coefficients
7 back out, different sizes.

8 **Q.** But the coefficients reflect the relative importance of
9 the input variables to the model, correct?

10 **A.** I'm not really sure.

11 **Q.** Let's look at your chart here and see if we can clear it
12 up.

13 Here you've got athlete coefficient of 6.32 and so
14 forth, correct?

15 **A.** That's the number there, yes.

16 **Q.** Okay. And then for personal 1 or 2, you've got a
17 coefficient of 2.4 and change, correct?

18 **A.** That's correct.

19 **Q.** So that means that a coefficient for athlete is
20 relatively higher than the coefficient for personal 1 or 2,
21 correct?

22 **A.** Yes, it's larger.

23 **Q.** And if these variables are going into a model that's
24 trying to predict whether or not you're admitted to Harvard,
25 being an athlete would be more positively associated with

1 admission than personal 1 or 2 in our example, correct?

2 **A.** That sounds -- could you repeat that? I'm sorry.

3 **Q.** If this is a model that's trying to predict admission to
4 Harvard, being an athlete would be more positively associated
5 with admission to Harvard than a personal 1 or 2, right?

6 **A.** I think so, but I'm not entirely sure.

7 **Q.** Okay. And then if we move down here, you've got
8 coefficients related to some racial or ethnic categories,
9 correct?

10 **A.** I do, yes.

11 **Q.** And I've got those highlighted on the screen, right?

12 **A.** Thank you.

13 **Q.** Do you see those? Do you see what I've got highlighted?

14 **A.** Yes.

15 **Q.** And, again, what you're doing here is you're calculating,
16 you're determining a coefficient that's associated with these
17 four variables that I've got highlighted on the screen,
18 correct?

19 **A.** You get coefficients for those four and then the other
20 ones in the model, yes.

21 **Q.** You get coefficients to determine the relative importance
22 of the variables in your model, correct?

23 **A.** I don't know if importance is the way I describe it.
24 Just the relative sizes.

25 **Q.** The relative sizes of the variables in your model. Would

1 you agree with that?

2 **A.** Sure.

3 **Q.** Okay. And here we've got the relative size of the
4 variable for the coefficient for African-American is 2.3,
5 which is higher than the coefficient for Native American,
6 which is 1.7, which is higher than the variable for Hispanic,
7 which is 1.2, and Asian is negative 4.2. Do you see that?

8 **A.** Yes.

9 **Q.** And just so you're -- I'll also point out to you that
10 because Dean Fitzsimmons was asking for the interaction of
11 the low income and Asian variable --

12 MS. ELLSWORTH: Your Honor, I'm just going to
13 object on the characterization. The witness was clear.

14 MR. HUGHES: I'll start a new question.

15 **Q.** There's another variable in here which has low income and
16 Asian, correct?

17 **A.** Yes.

18 **Q.** And you calculated the coefficient for that, right?

19 **A.** Yes.

20 **Q.** Okay. Now, let's go to P12. And you talked with
21 Ms. Ellsworth about the goals --

22 **A.** Sorry.

23 **Q.** -- and what I want to do here, I just want to reorient us
24 to the top of page 32. Are you there?

25 **A.** Sorry. Yes.

1 **Q.** And the goal of your analysis was "Using various
2 admissions ratings, how well can we approximate admit rates
3 by race ethnicity and the demographic composition of the
4 admitted students pool." That was the goal of your analysis,
5 right?

6 **A.** Of these in the following slides, yes.

7 **Q.** And then here what we have on this page -- actually, go
8 back to strategy.

9 What you tell us on the second bullet is "These
10 models generate fitted probabilities of admissions given an
11 applicant's characteristics how likely are they to be
12 admitted," correct?

13 **A.** Yes, the two bullets would sort of cover that.

14 **Q.** And just like the coefficients for the variables that we
15 looked at in P46, what you did here is you generated a
16 coefficient for each of the variables that you used in the
17 models in P12, correct?

18 **A.** Yes, there would be coefficients.

19 **Q.** And the coefficients tell you the size or the importance
20 of the variable, right?

21 **A.** Size, yes.

22 **Q.** Okay.

23 **A.** Or the effect size.

24 **Q.** The effect size, right?

25 **A.** Yes, I believe so.

1 **Q.** And then if we go to the topic that's been of much
2 discussion, you generate a coefficient for all of the
3 variables listed here on page 33, correct?

4 **A.** I'm not quite sure what you're asking.

5 **Q.** These are the variables in the model that's in P12,
6 correct? In the models.

7 **A.** Can you -- sorry, can you -- I'm sorry.

8 **Q.** Let me try to ask it in bit-sized pieces. I'm probably
9 asking another poor question.

10 If we look at model 1, we've got academic index and
11 academic rating, correct?

12 **A.** Yes.

13 **Q.** And you would have calculated coefficients for those
14 variables to show the effect size of those variables,
15 correct?

16 **A.** I would have calculated the coefficients, yeah.

17 **Q.** For both those variables, right?

18 **A.** Yes.

19 **Q.** And the same holds true for the additional variables that
20 you add for model 2, correct, legacy and athlete? You would
21 have calculated the coefficients for those variables,
22 correct?

23 **A.** Yes, but that would be separate from model 1. So the
24 coefficients for academic index and academic rating would
25 likely change with the addition of those other two.

1 Q. Right, because you're recalculating the relative
2 importance of the coefficients, right?

3 A. Just recalculating the coefficients.

4 Q. And then for model 3, again, you recalculate -- you
5 calculate the coefficients for all the variables that we see
6 in model 3, correct?

7 A. Yes.

8 Q. And the same thing goes true for model 4; you calculate a
9 coefficient for every variable, correct?

10 A. Yes.

11 Q. And that includes the demographic variables in model 4.
12 To get to the actual results in model 4, you calculate a
13 coefficient of how important race is for an applicant's
14 chance of admission, correct?

15 A. I'm not sure I, again, calculated a coefficient.

16 Q. Well, you calculated a coefficient for every variable in
17 the model, right?

18 A. Yes.

19 Q. And the variables in the model are trying to predict
20 admission, right?

21 A. Yes.

22 Q. And so you calculated a coefficient of how important race
23 is for an applicant's chance for admission, correct?

24 A. I don't know if the importance portion is correct or not.

25 Q. Let me take that out. You calculated a coefficient

1 related to an applicant's race, correct?

2 **A.** Yes.

3 **Q.** You didn't just take the percentage of the admitted class
4 and put the percentage of the admitted class in your model;
5 you calculated a coefficient, right?

6 **A.** Yes.

7 **Q.** Okay. Now -- and what we see here on model 4 is that as
8 you keep calculating your coefficients and calibrating your
9 model and adding in variables, by the time you get to model 4
10 and you calculate your coefficients in model 4, you get
11 pretty close to the actual admitted class, correct?

12 **A.** Subject to what we talked about in terms of the circular
13 element.

14 **Q.** And on page 36, when you're telling -- OIR is reporting
15 to Dean Fitzsimmons what have we learned, you tell him, "Once
16 we account for ratings and demographic factors, we can
17 closely predict what the admitted class will look like,"
18 correct?

19 **A.** On the attributes included in those models.

20 **Q.** Right. And you didn't say it was circular or unreliable
21 or inaccurate, right?

22 **A.** I would have covered that in that first preface slide
23 with the preliminary, bold and underlined.

24 **Q.** And, again, the question that OIR posed to Dean
25 Fitzsimmons after showing him this analysis was, "Is there

1 bias against Asians in college admissions," correct?

2 **A.** That's what it says there.

3 **Q.** Okay. And the next step that OIR raised relating to this
4 is to further address the question of bias. "Is there more
5 data to elaborate our understanding of the role of the
6 personal essay and other factors?"

7 That was a question OIR posed, correct?

8 **A.** That's what it says on the slide.

9 MR. HUGHES: No further questions.

10 MS. ELLSWORTH: Nothing further. Thank you.

11 THE COURT: You're excused.

12 THE WITNESS: Thank you, Your Honor.

13 MR. CONNOLLY: Your Honor, SFFA calls Roger Banks.

14 (ROGER BANKS duly sworn by the Deputy Clerk.)

15 THE CLERK: Thank you. You may be seated.

16 And can you please state your name and spell your
17 last name for the record.

18 THE WITNESS: Roger Banks, B-a-n-k-s.

19 EXAMINATION BY MR. CONNOLLY:

20 **Q.** Good morning.

21 **A.** Good morning.

22 **Q.** My name is Michael Connolly. Thank you for being here.
23 You work at the Harvard admissions office, correct?

24 **A.** That is correct.

25 **Q.** And you are currently the senior associate director of

1 admissions; is that correct?

2 **A.** That is correct.

3 **Q.** And you've been employed in the Harvard admissions office
4 since 1983; is that right?

5 **A.** That is correct, too.

6 **Q.** And you've been a senior admissions officer since 1989,
7 right?

8 **A.** That is right.

9 **Q.** So you were around in 1990 when the Office For Civil
10 Rights investigated Harvard's treatment of Asian-Americans;
11 is that correct?

12 **A.** That is correct.

13 **Q.** Have you ever read OCR's statement of findings?

14 **A.** I have.

15 **Q.** Do you remember that OCR made a finding that readers used
16 race differently in the admissions process?

17 **A.** I don't recall that specifically, no.

18 MR. CONNOLLY: Your Honor, may I approach the
19 witness?

20 THE COURT: Yes.

21 **Q.** Can you please turn to page 15. I've handed you OCR's
22 statement of findings. It is labeled P555.

23 THE COURT: Do I have this one, or do you want me
24 to work off the screen? I'm happy to work off the screen.

25 MR. CONNOLLY: I have a copy.

1 THE COURT: Okay.

2 BY MR. CONNOLLY:

3 Q. Are you there?

4 A. I'm here.

5 Q. Do you see the bottom paragraph of -- or do you see the
6 last paragraph of page 15? It starts "We found." Do you see
7 that paragraph?

8 A. I do.

9 Q. Okay. I'm going to read the paragraph to you. It says,
10 "We found that the readers had several different views as to
11 where and whether Asian-American ethnicity was given positive
12 weight or a tip in the admissions process. Some readers
13 explain that when ethnicity was deemed to be a significant
14 factor in an application, it was reflected in the POR and
15 during discussions at subcommittee and committee meetings.
16 Other readers indicated that ethnicity was a factor
17 considered throughout the entire admissions process.

18 They stated that it could be reflected in the four
19 reader rating areas as well as in the POR and during the
20 subcommittee and committee meeting discussions. Still other
21 readers stated that ethnicity was not a factor at all, unless
22 the effect of that ethnicity on the applicant was evident
23 from the applicant's file. They indicated that ethnicity was
24 only considered a plus when the applicant wrote about or
25 indicated the significance of his or her heritage, or when

1 there was some other indicia in the file of the applicant's
2 involvement with ethnic community organizations or groups?"

3 And my question is, since OCR laid out several
4 different views as to how Harvard used race in 1990, my
5 question is which type of reader sort of reflects how you
6 used race in 1990?

7 **A.** I always took the application as a whole. My use of
8 ethnicity probably was reflected in the overall rating,
9 frankly, more than any other aspect of the case.

10 **Q.** So would it be this first reader that OCR talks about
11 where it says, "Some readers explain that when ethnicity was
12 deemed to be a significant factor in an application, it was
13 reflected in the POR and during discussions at subcommittee
14 and commit meetings"?

15 **A.** Yes.

16 **Q.** And you have not changed how you used race in the
17 admissions process since then?

18 **A.** I have not.

19 **Q.** I'd like to discuss full committee meetings.

20 You serve on the A, R and T dockets; is that
21 correct?

22 **A.** Well, in all honesty there is no more R docket. It's
23 been subsumed by other dockets, but I did serve on those
24 dockets.

25 **Q.** Is there reason --

1 **A.** Just administrative economy.

2 **Q.** And during subcommittee meetings -- so you are on the A
3 and the T docket right now?

4 **A.** Currently, yes.

5 **Q.** Is that still California and Texas?

6 **A.** No. Actually, it's California and New York.

7 **Q.** California and New York?

8 **A.** New York City, yes.

9 **Q.** And during subcommittee meetings, you make tentative
10 decisions on the applications that are in your dockets; is
11 that right?

12 **A.** Yes.

13 **Q.** And other admissions officers are doing the same thing in
14 their dockets, I assume?

15 **A.** Yes.

16 **Q.** So by the time full committee meetings start, all the
17 applicants will have a tentative designation, correct?

18 **A.** Yes.

19 **Q.** And the full committee meeting is the meeting where you
20 have 40 admissions officers and Dean Fitzsimmons is running
21 the meeting, correct?

22 **A.** He chairs that meeting, yes.

23 **Q.** And the purpose of the full committee meetings is to make
24 final decisions on these applicants, correct?

25 **A.** As final as we can get them before mailing deadlines,

1 yes.

2 **Q.** And during the full committee meeting, Dean Fitzsimmons
3 typically will give the full committee a sense of how far you
4 had over-admitted the class and, therefore, how many students
5 need to be taken out of the class; is that correct?

6 **A.** That is correct.

7 **Q.** And at the full committee meetings, what do you recall
8 Dean Fitzsimmons saying about race?

9 **A.** Well, typically what he would do is give us a sense of
10 where we were along a variety of planes, academic,
11 extracurricular, geographic, in addition to race, ethnicity,
12 gender breakdowns, sort of a scattergram of the class as it
13 was admitted at that point in time.

14 **Q.** Sure. And to be clear, typically he would give you a
15 breakdown of admitted students by race and ethnicity?

16 **A.** In addition to other indicia, yes.

17 **Q.** I'd like to ask you about your role in an organization
18 called the Association of Black Admissions and Financial Aid
19 Officers of the Ivy League and Sister Schools.

20 Do you recognize that organization?

21 **A.** I do.

22 **Q.** Is it also called ABAFAOILSS?

23 **A.** It is.

24 **Q.** That's very long, right?

25 **A.** Longest acronym I know of.

1 **Q.** And for ABAFAOILSS, all of the Ivy League schools are
2 members, correct?

3 **A.** Yes, that is correct. In addition to others, yes.

4 **Q.** Right. And the sister schools are members, right?

5 **A.** The sister schools and Stanford actually.

6 **Q.** And is MIT a member?

7 **A.** Also in addition to MIT, correct.

8 **Q.** So I have 16 schools. Does that sound about right?

9 **A.** It's about right.

10 **Q.** And ABAFAOILSS holds two conferences a year, right?

11 **A.** Yes.

12 **Q.** One is in January and one is in May?

13 **A.** Typically, yes.

14 **Q.** And you regularly attend these conferences, correct?

15 **A.** I do.

16 **Q.** And at each conference there is a meeting called a round
17 robin meeting, correct?

18 **A.** That is correct.

19 **Q.** And typically one representative from each school attends
20 the round robin meeting, right?

21 **A.** Typically, yes.

22 **Q.** And at the round robin meeting, a representative from
23 each school will go around the table providing numbers of
24 applicants, acceptances and enrollments by race, correct?

25 **A.** That is correct.

1 **Q.** And as the numbers are read aloud, everyone at the round
2 robin meeting will write the numbers down on a chart,
3 correct?

4 **A.** That also is correct.

5 **Q.** And the one exception is that if a college does not
6 report its numbers, their representative will be asked to
7 leave the room as the institutional numbers are reported; is
8 that correct?

9 **A.** That is policy, yes.

10 **Q.** Okay. And part of the reason that you all exchange data
11 in this fashion is because the schools are trying to preserve
12 confidentiality given the sensitivity of this data; is that
13 right?

14 **A.** That's one of the reasons we do, yes.

15 The other reason, quite frankly, goes back to the
16 essential goal of the organization, which is to learn about
17 other schools better, best practices, et cetera.

18 **Q.** Now, in the past, after round robin meetings, you have
19 met with Dean Fitzsimmons to discuss what happened at these,
20 correct?

21 **A.** Yes, I would meet occasionally. I've been a member of
22 the organization for 40 years, and all of those years at
23 Harvard -- some of those years I was actually an associate
24 member, but when I was a full member, I would show those data
25 to the Dean very briefly, yes.

1 **Q.** And that was my next question.

2 So the chart that you were filling out at the round
3 robin meetings --

4 **A.** Yes.

5 **Q.** -- which contains -- it contains the confidential data of
6 the schools who are members of ABAFAOLSS, correct?

7 **A.** That is correct, yes.

8 **Q.** And you have in the past taken that chart that you filled
9 out and brought it back to Dean Fitzsimmons, correct?

10 **A.** Yes, that is correct.

11 **Q.** And you have seen him look at this chart in the past,
12 correct?

13 **A.** I have, yes.

14 **Q.** And although you take this chart back to Dean
15 Fitzsimmons, you don't know what, in particular, the Dean was
16 interested in about these numbers; is that correct?

17 **A.** That is safe to say.

18 **Q.** Now, when ABAFAOLSS meetings are occurring, the deadline
19 for submitting applications to Harvard is over, correct?

20 **A.** Yes.

21 **Q.** So, for example, at the January ABAFAOLSS meetings, there
22 is nothing Harvard can do at that point to increase the
23 number of applications it receives from minorities for that
24 cycle, correct?

25 **A.** For anyone for that cycle, right, exactly.

1 **Q.** But Harvard can, at this point, still make admissions
2 decisions on the applications of those who applied during
3 early action but have been deferred to regular action,
4 correct?

5 **A.** Of course. That would be true.

6 **Q.** And Harvard can also still make admissions decisions on
7 the applications it has received for the regular action
8 cycle, correct?

9 **A.** Yes, that would be correct.

10 MR. CONNOLLY: Pass the witness.

11 MS. ELLSWORTH: Your Honor, may I proceed?

12 THE COURT: Yes.

13 EXAMINATION BY MS. ELLSWORTH:

14 **Q.** Good morning, Mr. Banks.

15 **A.** Good morning.

16 **Q.** Before I talk about your role on the admissions office, I
17 just want to follow up on a few of those final questions from
18 Mr. Connolly.

19 Does ABAFAOLSS have any role in the admission of
20 any applicant to Harvard College?

21 **A.** No, none whatsoever.

22 **Q.** Have you ever used the numbers obtained during an
23 ABAFAOLSS meeting to set any targets for Harvard admissions
24 process?

25 **A.** No, never.

1 **Q.** Do you use the numbers obtained at ABAFAOLSS meetings for
2 any purpose at all?

3 **A.** No.

4 **Q.** Is ABAFAOLSS -- well, withdrawn.

5 What is the purpose or the mission of ABAFAOLSS?

6 **A.** Well, the central purpose of the organization is to -- is
7 professional development, to become more expert in this area,
8 which is a very complicated part of administration in higher
9 ed. I think that case law proves that.

10 From a little bit of context, if possible, the
11 organization was formed in 1970, which really would have
12 represented, for a lot of colleges and universities, kind of
13 the dawning of the age of modern recruitment of anyone,
14 minorities and otherwise. There was no blueprint. There was
15 no owner's manual about how to do this.

16 So the original founders of the organization
17 determined that it might be useful to pool, as it were, their
18 growing -- ever-growing knowledge and experience with this
19 kind of activity.

20 I would also wish to add, if I may, that there was
21 a lot of public interest in this area. The schools have
22 mandated that this work be done, and it was -- I think
23 forming such an organization, I think, was a very prudent
24 thing to do.

25 **Q.** What racial and ethnic backgrounds are the focus of

1 ABAFAOLSS today?

2 **A.** We are committed to recruiting Asian-American students,
3 African-American students, Latino students and Native
4 American students.

5 **Q.** And you described ABAFAOLSS as something like a
6 professional development association, right?

7 **A.** Yes.

8 **Q.** Mr. Connolly asked you some questions about one part of
9 ABAFAOLSS meetings, so I wanted to talk about a few other
10 things that happen at those meetings.

11 What are the general topics covered at an ABAFAOLSS
12 meeting?

13 **A.** Oh, we talk about recruitment strategies, what seems to
14 be effective, what seems to be working, what seems to be
15 working less effectively. We talk about yield, matriculation
16 strategies, what seems to be working, what seems not to be
17 working so well, and everything in between.

18 We talk about financial aid policies, which is a
19 major, obvious, component for not only recruitment but
20 matriculation and varies a lot among and between colleges and
21 universities.

22 There was often discussion of campus climate with
23 respect to minority students.

24 Again, a good deal of variation among and between
25 schools, depending on the time of year and the place where

1 the school is located and what was happening on campus
2 politically and otherwise.

3 So it was a wide range of issues, retention. You
4 know, things that were really salient to minority student
5 life on these campuses where minority students had not spent
6 much time before 1968 and 1969.

7 **Q.** Have you ever learned new or different recruitment
8 practices through your attendance at an ABAFAOLSS meeting?

9 **A.** Yes. You know, one of the problems with doing admissions
10 is that it's a very isolating profession, actually. And one
11 of the advantages of having conferences like this was the
12 opportunity to learn what other schools were doing and how
13 they were doing it; again, in a critical area of
14 administrative activity.

15 So I learned much over the course of my time with
16 the organization.

17 Would you like examples?

18 **Q.** I'd love an example.

19 **A.** Well, for example, there are lots of ways of going at
20 this, depending on finances and -- institutional finances and
21 resources and human resources and the will to do it and the
22 political climate in which these things are being done, or
23 wish to be done.

24 And there are schools, for example, that have
25 preview weekends in the fall before candidates even apply.

1 There are fly-in programs for students before they even
2 apply. There are fly-in programs for students after they're
3 admitted. There are -- there's one school, one of our peer
4 institutions that used to have -- I'm not sure whether or not
5 it's still conducting things this way -- a four-pronged
6 preview weekend in the fall for different minority groups.
7 These things were done for different academic reasons in
8 addition to racial and ethnic background.

9 There's a lot of -- really, a surprising amount of
10 variation. And if you were sitting in my office in
11 Cambridge, I would never have known things like that, and I
12 think it's valuable and important to know.

13 **Q.** How have you taken into account some of the strategies
14 that you've learned at ABAFAOILSS meetings in your work at
15 Harvard College admissions?

16 **A.** Well, during my time as, you know, UMRP director, I think
17 it was probably midway into my 20 years with the program,
18 there was a fair amount of discussion about Native American
19 recruitment; Dartmouth's fly-in program, for example, which
20 has been extraordinarily successful, and that, of course, you
21 know, would prompt a me-too discussion, how about us, maybe
22 we could do something like that, too.

23 And I took the idea back to our office and our
24 dean, and he suggested talking to our students, Native
25 American students, and to try to, you know, sort of get the

1 sense of their interest in something like this.

2 Some of those students, in fact, had attended
3 Dartmouth's fly-in program. They chose Harvard anyway. They
4 don't get a 100 percent bounce on the program, but it's a
5 very big bounce on the program.

6 And the consensus, actually, coming back from the
7 students was that they really actually preferred not to have
8 a fly-in program. And we revisit that issue from time to
9 time.

10 But, again, from the standpoint of trying to
11 develop professional expertise on a complicated subject, such
12 as minority enrollment and admissions, et cetera, one could
13 do worse than by listening to what other schools are doing
14 and how they're doing it.

15 **Q.** Mr. Banks, just two more questions about ABAFAOILSS.
16 Mr. Connolly asked you some questions about discussions with
17 Dean Fitzsimmons that you may have had after ABAFAOILSS
18 meetings. Do you recall that?

19 **A.** Yes.

20 **Q.** How often did you share information about other schools'
21 admission numbers with Dean Fitzsimmons?

22 **A.** If I were to hazard a guess, over the 20 years that I ran
23 the program with the UMRP, of which I've been a member of
24 ABAFAOILSS, three times maybe, four -- I'm not even sure four
25 times. I would say three that I can directly, clearly

1 recall.

2 **Q.** Over a 20-year period?

3 **A.** Yes.

4 **Q.** All right. So let's move on to the topic of this case,
5 which is Harvard College admissions. You've been working --

6 THE COURT: Can I ask one question?

7 MS. ELLSWORTH: Yes.

8 THE COURT: During the course of this case, I've
9 seen Asians referred to as Asians, which seems like a big
10 group of different things. Right? And then I see things
11 like Native Americans and Hawaiian Islanders, which seem like
12 tiny groups of things.

13 So how is it sorted out? Maybe in your experience
14 with ABAFAOILSS, like, how is that kind of -- how are those
15 categories determined as things to be looking at?

16 THE WITNESS: Well, Your Honor, these are typically
17 self-descriptors, and the discussion has evolved greatly over
18 the past -- over my time in the office.

19 When I arrived in the office in 1980, I would guess
20 that the Asian-American population, for example, was far less
21 diverse than it is today. There are 19 different student
22 groups on campus that represent different demographics within
23 the Asian-American population alone, and all of these groups
24 are a segment. I think there are at least a dozen cultural
25 groups on campus today that represent Hispanic students.

1 So that's an area where we all, within the
2 organization, just sort of watched -- it's still an ongoing
3 discussion. And, you know, from the standpoint of, you know,
4 recruitment, you know, generally speaking, you know, we don't
5 have the kinds of resources to recruit people based on
6 particular subgroups per se.

7 We tried, for example, because we recognize that
8 Cambodian students, for example, very small segment of the
9 Asian-American population, underrepresented at our school at
10 least, and we have tried to target that group, for example,
11 in terms of outreach and recruitment.

12 But, you know, the whole matter is kind of -- is
13 somewhat elusive. And ultimately it comes back to the
14 individual and her or his experience, you know, sort of no
15 matter what their ethnic background and how individualized it
16 is.

17 I don't know whether or not that is responsive to
18 your question. You don't have to answer that.

19 THE COURT: Go ahead.

20 BY MS. ELLSWORTH:

21 **Q.** Well, let me turn to the subject of recruitment,
22 Mr. Banks, and I'll ask Mr. Lee to pull up DD 4.2.

23 So you've held a variety of recruitment-related
24 positions in your time at Harvard College, right?

25 **A.** I have, yes.

1 **Q.** So to avoid unnecessary memory tests --

2 **A.** Yes.

3 **Q.** -- we've put this together.

4 Are these five of the recruitment-related positions
5 that you've held at Harvard College admissions?

6 **A.** Yes.

7 **Q.** And, again, you joined the office in 1980, right?

8 **A.** Yes.

9 **Q.** And you became a full-time officer a few years later,
10 right?

11 **A.** Correct.

12 **Q.** So let's talk first about what is actually listed second
13 on this slide, which is the "Undergraduate Minority
14 Recruitment Program."

15 And first, can you please just explain what is the
16 Undergraduate Minority Recruitment Program, or we can also
17 call it the UMRP.

18 **A.** The Undergraduate Minority Recruitment Program, the UMRP
19 was -- is an organization that was assembled in 1971, and its
20 purpose was to help the admissions office conduct recruitment
21 activities targeted at minority students around the country.

22 **Q.** And how long did you serve as the director or codirector
23 of the UMRP?

24 **A.** For roughly -- more than 20 years.

25 **Q.** When you were the director, how and what are the steps

1 that the UMRP took or the efforts in which the UMRP engaged
2 to go about recruiting students to apply to Harvard?

3 **A.** Well, there were several approaches that we tended to
4 use. Keep in mind that these were -- my job was to assemble,
5 train and supervise a cohort of ten undergraduates whose
6 primary responsibility was to get good grades and send them
7 home to their parents and not necessarily to spend 15-plus
8 hours working a job like this, which had a lot of complexity
9 to it.

10 So we conducted direct mail campaigns,
11 letter-writing campaigns, telephone campaigns. We sent as
12 many as 30 students back to their hometowns to recruit in
13 high schools, at least a dozen high schools, in addition to
14 at least two middle schools for a week, essentially
15 replicating the activity of a full-time admissions officer.

16 We held a lot of special information sessions. We
17 did a lot of greeting families and individuals who came to
18 the campus and wanted to talk to a student who was living the
19 life of a minority student at Harvard.

20 That was a lot of our activity in the fall. And
21 then we would get to the spring, and much of the focus at
22 that point was yield matriculation. And a very strong
23 component of matriculation was hosting people for, what for
24 many years was a stand-alone minority recruitment weekend,
25 which was run pretty much by the students themselves. And it

1 was festooned with various academic programming and
2 extracurricular programming and social programming, et
3 cetera, et cetera.

4 It became the kind of model for what eventually
5 turned out to be our nos broad-scale recruitment effort,
6 so-called Visitas program.

7 But a lot of the activity was focused on yield in
8 the spring, and then we rolled right into the summer working
9 on the next year's class; again, with direct mail and
10 telephoning and, you know, doing our best to reach people by
11 whatever means we could.

12 **Q.** So the UMRP employs current Harvard students, right?

13 **A.** That's right, yes.

14 **Q.** Why does the UMRP use current Harvard students to conduct
15 its outreach activities?

16 **A.** Well, based on my experience, I thought everyone in the
17 office really felt that current undergraduates were the best
18 ambassadors for their -- for the Harvard experience.

19 **Q.** If you can look, Mr. Banks, please, at Tab 1 in your
20 binder, which is DX47. It should be the one in your right
21 hand.

22 **A.** Okay.

23 **Q.** Or maybe the one in your left hand. Do you have DX47?

24 **A.** I do, thank you.

25 **Q.** Good. What is DX47, please, Mr. Banks?

1 **A.** DX47 is a training manual. This is an owner's manual,
2 actually, for the coordinators who worked with me in the
3 Undergraduate Minority Recruitment Program.

4 **Q.** And did you use this manual to train those student
5 coordinators?

6 **A.** Yes.

7 MS. ELLSWORTH: Your Honor, I'd move to admit DX47.

8 MR. CONNOLLY: No objection.

9 THE COURT: It's admitted.

10 (Exhibit DX47 admitted into evidence.)

11 BY MS. ELLSWORTH:

12 **Q.** If you can focus just on the title of the exhibit,
13 please, Mr. Banks.

14 **A.** Yes.

15 **Q.** And in particular, underneath the coordinator manual it
16 says "Five Divisions, One Goal," right?

17 **A.** Yes.

18 **Q.** What does that mean?

19 **A.** Well, there are essentially five different, again,
20 targets; that is to say, groups of students that we were
21 assigned to recruit: Asian-Americans, African-Americans,
22 Mexican-Americans and other Latino students, and Native
23 American students.

24 The one goal was to apply as much faith and energy
25 as one could summon to each one of those groups, recognizing

1 that, you know, some of those groups, quite frankly, were
2 larger than others in terms of administrative demands and
3 requirements, interface, time spent deployed in the
4 recruitment process.

5 **Q.** Have those five groups that you just identified been the
6 five groups that the UMRP recruits since you joined the
7 office -- or since you became the director of the UMRP?
8 Pardon me.

9 **A.** Yeah. Certainly since I was -- when I became director of
10 the program in 1992, this is what I inherited, yes.

11 **Q.** And that includes Asian-American students, correct?

12 **A.** Oh, yes, very much so.

13 **Q.** Are the student coordinators that the UMRP employs, are
14 they associated typically with any student groups on campus?

15 **A.** Typically the leaders of various minority groups and
16 communities on campus became our coordinators.

17 When I became director of the program in 1992, for
18 example, for Asian-American students in particular, the two
19 co-heads of the Triple A the Asian-American Students
20 Association on campus, which was at that point the largest
21 Asian-American group on campus, they were expected to become
22 the two coordinators of the UMRP, and they always went hand
23 in hand. And it was -- the same was true for most of the
24 other groups as well.

25 **Q.** What are some of the characteristics, generally speaking,

1 of the student coordinators that worked with you over the
2 years when you were the director of the UMRP?

3 **A.** Well, these were very highly resourceful, bright
4 individuals. Again, the assignment essentially was to do
5 what adults do on a full-time basis, what we were trying to
6 do on a full-time basis they were trying to do on a part-time
7 basis. And so they had -- their qualities were intellectual
8 and very personal as well.

9 They had to be quick on their feet. They had to be
10 prepared to work longer hours than those for which they were
11 being paid. They were on a salary. They weren't being paid
12 by the hour. They did extraordinary work, actually.

13 **Q.** Were the UMRP student coordinators expected to be
14 ambassadors for Harvard in the recruitment process?

15 **A.** Yes, yes, completely.

16 **Q.** And are you proud of the work that the UMRP coordinators
17 did under your time as the director of the program?

18 **A.** Oh, no -- yes. And these again, I think Harvard
19 College's -- the students who were there during my term of
20 office who proceeded them and who are currently doing this
21 work, I think the college owes these people a great debt,
22 actually.

23 **Q.** Mr. Banks, when you first began working at Harvard in
24 1980, about what percentage of the class was nonwhite?

25 **A.** Less -- well less, well below 20 percent.

1 **Q.** And what percentage of the Harvard class is nonwhite
2 today?

3 **A.** I've seen figures ranging from 49 to 50 to 51 percent.

4 **Q.** In your opinion, has the UMRP played any role in that
5 increase?

6 **A.** I would hope that we have. I know that's in combination
7 with other factors.

8 **Q.** What is the role, in your view, that the UMRP has played
9 to increase the levels of diversity at Harvard?

10 **A.** Well, a lot of the evidence that's come to me has been
11 anecdotal in nature. In our office we kept a bulletin board,
12 actually, and there were many testimonials from individual
13 students, family members, parents who would write and express
14 their gratitude to our coordinators saying something along
15 the lines of, I actually never would have considered applying
16 to a place like Harvard, much less attending it had it not
17 been for your telephone call or had it not been for your
18 visit to my high school, things of that kind.

19 **Q.** How would you compare the recruiting efforts that Harvard
20 undertakes to Harvard's peer institutions?

21 **A.** Well, again, this is something, you know, I was able to
22 learn by attending ABAFAOILSS meetings, but I think -- I
23 think in compared to -- and not to knock any of my peer
24 institutions -- but I think we are -- we work very hard at
25 this. Again, we work year-round at this and very

1 aggressively. Carefully but aggressively. And I am not
2 aware, frankly, of a peer institution that pours as much
3 human and other capital into this endeavor.

4 **Q.** Mr. Banks, I'd like to move to some of the other
5 recruitment programs you've been involved in.

6 Can I have DD 4.4, please, Mr. Lee?

7 You were also involved in recruitment efforts for
8 the Harvard Financial Aid Initiative, right?

9 **A.** Yes.

10 **Q.** What is the Harvard Financial Aid Initiative, or HFAI?

11 **A.** The Harvard Financial Aid Initiative was created,
12 really -- the architects of the program were
13 President Summers and Dean Fitzsimmons. And together they
14 recognized that we might do well to consider enlarging our
15 base of students who needed financial aid at the highest
16 level, the fullest level.

17 So that was the mission of the program really. It
18 was to help low-end, middle-income students deal with
19 affordability, which in its own way is what I would call the
20 silent killer in college recruitment because, essentially,
21 there are plenty of families and individual students who look
22 at a price tag, and the other variables, the other things
23 that they see may be perfectly fine, but they will select
24 themselves out of applying simply because they imagine that
25 they couldn't afford it. So that's what the Harvard

1 Financial Aid Initiative was designed to address.

2 **Q.** And was the Harvard Financial Aid Initiative designed to
3 dispel that sticker shock that you just identified, for
4 purposes of Harvard College admissions at least?

5 **A.** Well, yes. I mean, essentially for families who at that
6 point -- and we began this program in 2004 and ramped it up a
7 couple of years after that, but for families earning \$40,000
8 a year or less, we paid for everything. And then we, you
9 know, we sort of ramped it up. And at this point for
10 families earning \$65,000 or less, it's a fully-funded
11 education.

12 It is not free, which is sort of a distortion, a
13 media distortion. Not least because people have to get into
14 the college through the admissions process to qualify for the
15 financial aid initiative, but I think it has allowed us to
16 dispel a lot of negative perceptions around affordability and
17 cost.

18 At this point, you know, we're able to compete with
19 most state universities in the country in terms of what
20 individuals might have to pay to attend.

21 **Q.** Does HFAI have a recruiting component separate from the
22 financial aid aspect?

23 **A.** Yes. One of the reasons I was asked to get involved was
24 because of my experience with the UMRP, and so we used many
25 of the same kinds of tactics. We had a group of student

1 coordinators. We used direct mail and telephone outreach.
2 That was 2014. So email outreach, lots of -- you know, sort
3 of lots of similar kinds of recruitment tools.

4 **Q.** And you were the first director or co-director of the
5 recruiting component of HFAI, right?

6 **A.** Yes.

7 **Q.** You mentioned that the recruitment strategies used by
8 HFAI were influenced by the UMRP. Do I have that right?

9 **A.** You do.

10 **Q.** Why is that?

11 **A.** Well, we were trying to -- there are very few novel tools
12 in the cabinet when it comes to recruitment. There are only
13 so many things that you can do and only so many approaches
14 one can use.

15 The tools that we used in the UMRP seemed
16 reasonably effective and safe, and we thought they might be
17 well deployed with the HFAI program.

18 And we also, frankly, enlisted the help of alumni
19 in rolling out the HFAI program, in addition to the media.

20 **Q.** When you first became the co-director of the Harvard
21 Financial Aid Initiative, how would you describe the
22 socioeconomic diversity of Harvard's student body?

23 **A.** I would -- I would guess that the percentage of students
24 at the college on full financial aid, need-based financial
25 aid, was probably something in the order of 10 to 11 percent.

1 **Q.** And has the socioeconomic diversity at Harvard increased
2 since the financial aid initiative was launched in 2004?

3 **A.** Substantially. I would guess that the percentage of
4 students at the college on full financial aid at this point
5 is 18, 19 percent.

6 **Q.** Has HFAI's recruitment program or the recruitment
7 component of the financial aid initiative played any role in
8 that increase in socioeconomic diversity at Harvard?

9 **A.** Well, yes. I would hope so. I think, again, when
10 families who are struggling to make ends meet, you've got two
11 parents working, and a \$65,000 tab is a substantial amount of
12 money. To know that families won't have to worry about that
13 and the students can, you know, attend a place like Harvard
14 without having to worry about books and things like that I
15 think is fundamental. I think it's a real game-changer.

16 I should also mention that we also took loans out
17 of our financial aid packaging for everybody who qualified
18 for financial aid as a result of this initiative, and that
19 also, I think, has very much changed the conversation that we
20 are able to have between parents and students who are
21 interested in the college.

22 MS. ELLSWORTH: Your Honor, I'm not going to
23 finish before lunch. Is now a time you'd like to take the
24 lunch break, or should I soldier on?

25 THE COURT: That's fine. I was hoping we'd finish

1 by lunch. Everybody always looks so happy when I tell them
2 they're excused. But we can come back. I'd like to take an
3 hour today, so 1:00.

4 MS. ELLSWORTH: That's great. Thank you, Your
5 Honor.

6 (Recess taken 12:00 p.m.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 ***** AFTERNOON SESSION *****

2 THE CLERK: All rise. Court is in session. Please
3 be seated.

4 THE COURT: When you're ready, Ms. Ellsworth.

5 MS. ELLSWORTH: Thank you, Your Honor.

6 BY MS. ELLSWORTH:

7 Q. Mr. Banks, moving on to another recruitment program, you
8 also mentioned that you were a codirector of the Harvard
9 College Connection; is that right?

10 A. Yes.

11 Q. When was the Harvard College Connection formed?

12 A. In 2014.

13 Q. What is the Harvard College Connection?

14 A. It actually is kind of an extension of the Harvard
15 financial aid initiative. The objective of the program was
16 to try to reach low- and middle-income students using social
17 media as a means of communication versus traditional emails,
18 direct mail, telephones, etc.

19 MS. ELLSWORTH: And, Mr. Lee, could we have DD 4.5,
20 please. Sorry, I gave you the wrong slide number.

21 BY MS. ELLSWORTH:

22 Q. Is the Harvard College Connection still focused on
23 lower-income students?

24 A. Yes. But I think it's grabbed the attention of a lot of
25 other students who are very deep into social media and make

1 inquiries anyway.

2 **Q.** And do current students participate in recruiting efforts
3 through the Harvard College Connection?

4 **A.** Yes. Again, the model is to have current undergraduate
5 staff these programs because they're the most effective
6 representatives of the college.

7 **Q.** Mr. Banks, do you also have a role with the visitor
8 center and tour guide program at Harvard College?

9 **A.** Yes. I've been director of the Harvard Admissions
10 Visitor Center for 10, almost 11 years, and I was director of
11 the tour guide program for 8 years.

12 **Q.** Approximately how many tours does the tour guide program
13 conduct each year?

14 **A.** Oh, hundreds of tours.

15 **Q.** Who conducts the tours?

16 **A.** Again, current undergraduates.

17 **Q.** Do you consider the tour guide program to be a part of
18 recruiting?

19 **A.** Yes, very much so. Actually in lots of survey results
20 over the past several years suggests that the campus tour is
21 most important variable that students use when trying to
22 decide where to apply to college.

23 **Q.** So all of the recruitment programs that we've discussed
24 before lunch and just now have involved current students sort
25 of running the programs; is that right?

1 **A.** Yes. That would be correct.

2 **Q.** Why does Harvard use its current students to recruit
3 potential future students?

4 **A.** Well, again, I think the ultimate connection between
5 prospective students and current students is clear. I think
6 people are looking for truth and integrity of information and
7 not for a sales pitch. I think they're counting on current
8 undergraduates to be honest to a fault, and they tend to be.
9 And we trust our students to do that.

10 **Q.** Mr. Banks, I wanted to turn to an example of an applicant
11 file that I'd like to show.

12 MS. ELLSWORTH: But before I do that, Your Honor,
13 could we turn off the gallery monitors?

14 THE COURT: Yes.

15 MS. ELLSWORTH: And are the jury monitors, they can
16 be off as well?

17 THE CLERK: Yes.

18 MS. ELLSWORTH: Mr. Lee, could we have DX262 up,
19 please?

20 BY MS. ELLSWORTH:

21 **Q.** It's Tab 2 in your binder, Mr. Banks. You can look at
22 the version in your binder if you prefer.

23 **A.** It's sort of fuzzy. Thank you.

24 **Q.** What is this document, Defendant's Exhibit 262?

25 **A.** Well, this would be appear to be a full application

1 completed by a candidate for admission to the class of 2018.

2 **Q.** Did you review this file?

3 **A.** I did.

4 **Q.** Are your initials on the summary sheet?

5 **A.** They are.

6 MS. ELLSWORTH: Your Honor, I move to admit
7 defendant's 262.

8 MR. CONNOLLY: No objection.

9 THE COURT: It's admitted.

10 (Defendant Exhibit No. 262 admitted.)

11 BY MS. ELLSWORTH:

12 **Q.** Mr. Banks, without disclosing any personal information,
13 do you recall this applicant?

14 **A.** Yes, I do.

15 **Q.** Was this applicant admitted to Harvard?

16 **A.** Yes.

17 **Q.** Without identifying or naming the applicant's high
18 school, could you please just describe what some of the
19 characteristics of the applicant's high school were?

20 **A.** Yes. This is a school I know well. It's one of the
21 first schools I visited when I got into admissions 100 or so
22 years ago. It's a large, sprawling urban high school,
23 public, one of the largest high schools in the country, known
24 for its rigor and academics and also the diversity of its
25 student body.

1 **Q.** Do you review all application files that are submitted to
2 Harvard from this high school?

3 **A.** Yes.

4 **Q.** In a given cycle, you'll review every application filed
5 from this high school?

6 **A.** In addition to many other high schools, yes.

7 **Q.** And for how many years have you read -- been the first
8 reader on applications from this particular high school?

9 **A.** Off and on probably for 15-plus years.

10 **Q.** How has that impacted your assessment of letters that may
11 be written by guidance counselors or teachers at this high
12 school?

13 **A.** Well, I think it's -- I used to be a high school teacher
14 myself in a much smaller high school. It's hard to capture
15 attention of teachers and school officials in a school this
16 big. When one rises to the top in the classroom and outside
17 of the classroom, it's something noteworthy.

18 **Q.** Let's look, staying on this first page, page 1 of
19 Defendant's 262, did this applicant identify his or her race
20 or ethnicity?

21 **A.** Yes. Asian-American, Chinese.

22 **Q.** And looking at page 2 of the file, are those handwritten
23 notes written by you?

24 **A.** They are.

25 **Q.** Could you help us decipher these a little bit?

1 **A.** Decipher I think would be the correct -- yes.

2 "Lots to like. HFAI, first gen, basketball captain
3 at 5 feet tall. Sounds bright and lively. Hope alums can
4 help to fortify. Engineering may be a stretch, but let's
5 watch for further developments."

6 **Q.** What stood out to you about this applicant after you had
7 reviewed the entire file?

8 **A.** Well, I think our mission in the office is to try to find
9 people who will flourish in a residential -- fast-paced
10 competitive residential community. And she seemed to me to
11 be a promising bet.

12 In admissions parlance, I would have tagged her as
13 a great all-rounder, someone who's very versatile and good at
14 lots of very different kinds of things, again, inside and
15 outside of the classroom, and seemed to be, in personal
16 terms, you know, a very strong individual.

17 **Q.** Let's look back at the first page of the exhibit.
18 Looking at the first page, are there any indicators about
19 this applicant's socioeconomic status on the application
20 file?

21 **A.** Yes. I noticed several things quickly. I noticed that
22 the application fee was waived. I noticed that neither
23 parent had attended college, that in fact one parent is
24 unemployed. Both parents are in skilled trades. Those were
25 immediate indicators.

1 **Q.** And how were this applicant's grades?

2 **A.** She has a -- had a 98.02 average out of 100.

3 **Q.** What academic rating did you assign to this applicant?

4 **A.** A 3+.

5 **Q.** How would you describe her academic rating in the context
6 of Harvard's overall applicant pool?

7 **A.** I think taking into account her overall GPA, the quality
8 of the courses that she had taken -- which included, by the
9 way, a course in organic chemistry in high school, and other
10 advanced courses -- her various tests, ACT and AP test
11 scores, she was clearly capable of doing Harvard work and
12 doing it well.

13 **Q.** Was there anything that stood out about this applicant's
14 athletic participation?

15 **A.** Well, I was impressed by her captaincy of what I
16 assumed -- again, knowing something about the school and the
17 area in which it's located, this is not going to be a
18 recruited athlete for one of our Division 1 sports for
19 basketball.

20 But it did suggest to me something about her
21 leadership potential, which is important. She writes about
22 her love of the game, and other people write about her love
23 of the game. She actually plays basketball with guys a lot.
24 Truthfully, she sounds pretty good at the game. She's the
25 lead-point guard on her team. And I gather also in the file

1 that it was the only multiracial basketball team in the
2 athletic league.

3 Most students at Harvard -- a lot of students at
4 Harvard participate in athletics, actually. We have very
5 strong intramural programs, etc. So even though, again, she
6 wouldn't be a recruited athlete, my suspicion was that she
7 could, in fact, make a very strong contribution to athletics
8 at the school in the freshman dorms and in the upper-class
9 houses as well if she chose to.

10 **Q.** And let's look just to the bottom of the same page at the
11 profile ratings. What athletic rating did you assign to this
12 applicant?

13 **A.** A 3+.

14 **Q.** Would that athletic rating have been important to this
15 applicant's -- or to your consideration of this applicant's
16 file?

17 **A.** Given the fact when you're trying to whittle down 43,000
18 applicants to 2,000 admits, everything becomes important.
19 Everything becomes important.

20 Again, I was looking for earmarks of distinction
21 and potential contribution to the life of the college. And
22 it seemed to me that, in addition to the other things that
23 she was doing outside of the classroom, this was noteworthy,
24 yes. So it was, in fact, a part of my consideration.

25 **Q.** Looking at the next profile rating over, what personal

1 rating did you assign to this applicant?

2 **A.** I gave her a straight 2.

3 **Q.** So let's take a look on page 31 of the file, if we could.
4 Is this the guidance counselor recommendation for this
5 applicant?

6 **A.** Yes.

7 **Q.** And if you can look at the last paragraph on the page,
8 could you please read the first sentence, beginning "Born to
9 immigrant parents"?

10 **A.** "Born to immigrant parents. Serves as the family
11 translator as well as paying bills, reading mail, and
12 answering phones."

13 **Q.** What stood out to you about this guidance counselor
14 recommendation for this particular applicant?

15 **A.** Again, this is a very large high school. And I think the
16 average high school, public high school student-counselor
17 ratio is about 600 to 1 now. It used to be 500 to 1. That
18 was the standard metric. I think it's now six to maybe 700
19 to 1.

20 So it struck me as impressive that someone could
21 get this detailed a report from a guidance counselor at a
22 school this large. It just seemed to me unusual, given what
23 I know about the school and the nature of the demands on
24 guidance counselors and what they are prepared to commit
25 themselves to writing on behalf of students.

1 **Q.** Did the information in this guidance counselor
2 recommendation inform your assignment of a personal rating to
3 this applicant?

4 **A.** Yes. Again, it kind of dovetails with my sense that this
5 was a well-rounded, well-grounded, mature individual who
6 would make the most of whatever opportunities she faced.

7 **Q.** If you can turn, please, Mr. Banks, to page 42 of
8 Defendant's 262. What does page 42 show?

9 **A.** These are what are called check marks, which are
10 individual attributions characterized by teachers, and there
11 are designated categories of strength. One of the top in my
12 career is the best you can be. Those are the best checks you
13 can get. And they go down the line from one of the top to
14 excellent to good, etc.

15 So I was impressed that up and down these various
16 attributional characteristics, she was described as one of
17 the best in this teacher's teaching career.

18 **Q.** Do the check boxes filled out by teachers and guidance
19 counselors on a form like this, are they taken into account
20 in your assessment of an applicant to Harvard?

21 **A.** Oh, yes, absolutely. There are schools and teachers who
22 don't fill out these checks. They don't have the time or the
23 patience to do it. So when people actually do, it's worth
24 paying attention to.

25 MS. ELLSWORTH: Mr. Lee, can we just zoom in

1 underneath the ratings on the descriptions, academic
2 achievement on down to overall.

3 BY MS. ELLSWORTH:

4 **Q.** Are some of the check boxes that teachers and guidance
5 counselors are asked to fill out integrity?

6 **A.** Yes.

7 **Q.** Reaction to setbacks?

8 **A.** Yes.

9 **Q.** Concern for others?

10 **A.** Yes.

11 **Q.** Self-confidence?

12 **A.** Yes.

13 **Q.** Leadership?

14 **A.** Yes.

15 **Q.** Maturity?

16 **A.** Yes.

17 **Q.** Are these all taken into account in the personal ratings
18 that you might assign to an applicant?

19 **A.** Yes. Those kinds of personal characteristics are
20 important on a residential -- on a diverse and residential
21 campus where people are living and learning among each other
22 from very different, you know, points of origin and very
23 different aspirational levels. So yeah, they're very
24 important to us.

25 **Q.** Let's take a look at the next page, page 43, which is the

1 letter that accompanied those check boxes.

2 **A.** Yes.

3 **Q.** And can you please read the third paragraph with the
4 sentence beginning "I have observed." The very bottom of the
5 third paragraph.

6 **A.** "I have observed her helping other students to understand
7 some of the more detailed and difficult aspects of the course
8 material, always with a smile on her face."

9 **Q.** What stood out to you from this particular teacher
10 recommendation submitted on behalf of this applicant?

11 **A.** Well, Harvard College is a fast-paced, demanding academic
12 environment. Pedagogically, we are trying to take a little
13 bit of the edge off of that by, wherever possible -- and
14 faculty members are, too -- urging students to work in groups
15 and urging people to work cooperatively.

16 So whenever I see a recommendation from a teacher
17 that suggests that a student actually is at ease extending
18 herself or himself to other students to assist them in
19 getting material and class work that other students don't get
20 as quickly, that would tend to grab my attention always.

21 **Q.** Did the information provided in this teacher
22 recommendation letter inform your assignment of a personal
23 rating to this applicant?

24 **A.** Yes. Because in addition to that sentence there, there
25 are others. The end of the first paragraph reads, "One of

1 the nicest and kindest students that I've ever taught."

2 **Q.** And did that inform your rating of this applicant?

3 **A.** Again, very much so. I think that when teachers are
4 prepared to commit themselves with that degree of strength
5 and specificity in a recommendation that it deserves careful
6 consideration.

7 **Q.** Let's take a look back, please, at the first page of the
8 application, Defendant's 262, and particularly focusing on
9 the rating box at the bottom of the page.

10 Did this applicant receive ratings from another
11 reader in the Harvard College admissions office?

12 **A.** No. Under normal circumstances it would be appropriate
13 to send an application from the first reader to the chair for
14 a second reading with a 2- overall designation.

15 I decided in this case not to do that because I
16 felt that I didn't have enough critical information. I did
17 not have an alumni interview to confirm what I thought were
18 very promising personal qualities. I did not have
19 information nailed down about her financial circumstances,
20 and I thought that was really necessary.

21 And I knew, given the nature of our process, that
22 once that material was in, I could bring this case to the
23 subcommittee for a full, open, and fair discussion and then
24 to the full committee for a full, fair, open discussion
25 without the need of a second reading.

1 **Q.** And did you ultimately receive some of the information
2 that was missing when you first assigned ratings to this
3 file?

4 **A.** Yes. Yes.

5 **Q.** Did you ultimately raise this applicant for discussion in
6 the subcommittee?

7 **A.** Yes. Once the interview was in and we had a better sense
8 of her financial circumstances, yes.

9 **Q.** Can you identify any one particular factor that led to
10 this applicant's admission to Harvard College?

11 **A.** No. Actually there never is any single factor.

12 I understand and chafe somewhat when people
13 describe any admissions process this complicated involving
14 this many people and this many factors as just because a
15 student got in just because of X, Y, or Z.

16 What made this candidate strong is her
17 comprehensive strength, both academically, extracurricularly,
18 and personally, and the strength of her teacher
19 recommendations, and the strength of the interview, all of
20 which really in a parade of confirmation, virtual
21 confirmation led to an affirmative discussion of her
22 candidacy.

23 **Q.** Just a few more questions, Mr. Banks.

24 Does Harvard give applicants a tip for their racial
25 or ethnic background in the admissions process?

1 **A.** Yes.

2 **Q.** Is race the only factor that can serve as a tip in the
3 admissions process?

4 **A.** Race is never the only factor that serves as a tip in the
5 application process. It is only used in combination with
6 other factors and personal accomplishments and virtues as
7 they appear in the file.

8 **Q.** When you are reading and considering an applicant for
9 admission, how do you take race into account as a tip in the
10 process?

11 **A.** I tend to try to get a full sense of the strength of the
12 candidate based on academic, extracurricular, and other kinds
13 of considerations, teacher recommendations. We usually often
14 do not have alumni interviews to help to confirm some of the
15 personal qualities. So we have to distill the information as
16 it appears before us.

17 But once I get a sense of that, again, at that
18 point based on the strength of all those variables taken
19 together, then I would enter the tip into the calculus but
20 not before that.

21 **Q.** And to the extent that an applicant's race serves as a
22 tip in the process for one individual applicant, in what
23 rating that you assign to the application file might that be
24 reflected?

25 **A.** For me, based on my experience, I would put that -- I

1 would kind of insert that into the overall rating because
2 that suggests something about further discussion, the need
3 for further discussion and further consideration based on all
4 those factors together, not in isolation.

5 **Q.** Do you consider race when assigning any of the four
6 profile ratings -- the academic, extracurricular, academic,
7 or personal -- to an application file?

8 **A.** No. Never.

9 **Q.** Mr. Banks, you were discussing with Mr. Connolly this
10 morning when Dean Fitzsimmons occasionally provides some
11 information to the committee about where the class is. Do
12 you recall that testimony?

13 **A.** Yes.

14 **Q.** Has Dean Fitzsimmons ever provided information like that
15 only along racial or ethnic lines?

16 **A.** No. No. Again, it's a broad discussion of the admitted
17 class, including academic information, geographic
18 information, and other considerations, yeah.

19 **Q.** And to the extent that information is shared with the
20 committee, have you ever been told to admit more students of
21 a particular racial or ethnic background?

22 **A.** No, never.

23 **Q.** Have you ever been told to admit fewer students of a
24 particular racial or ethnic background?

25 **A.** Never.

1 **Q.** Mr. Banks, how many subcommittee meetings do you think
2 you've participated in over the course of your time at
3 Harvard admissions?

4 **A.** Many, with a capital M.

5 **Q.** How about full committee meetings? How many full
6 committee meetings do you think you've participated in?

7 **A.** An even larger capital M.

8 **Q.** You've been in the admissions office for over 30 years,
9 right?

10 **A.** That's correct.

11 **Q.** In those 30-plus years, how many times have you seen
12 another admissions officer demonstrate bias against an
13 applicant because of the applicant's race?

14 **A.** Never.

15 **Q.** In your 30-plus years in the admissions office, have you
16 ever been instructed to admit a target number of students of
17 any particular racial or ethnic background?

18 **A.** Never.

19 **Q.** When considering whether to admit an applicant, is an
20 applicant's race ever a negative factor?

21 **A.** No. Of course not.

22 **Q.** In your view, is it important that Harvard have a diverse
23 student community?

24 **A.** In my view, yes.

25 **Q.** In your view, does racial diversity have educational

1 benefits?

2 **A.** In my view, yes. I've been hanging around places like
3 this for a lot of years, and I think my own view is that
4 diversity of all kinds and excellence of all kinds, including
5 race/ethnicity, but also along lines of excellence in
6 academics and extracurricular has made our campus stronger,
7 more interesting, more attractive, frankly. I don't know
8 otherwise how to account for 43,000 applications to a school
9 that only can take 2,000 people.

10 MS. ELLSWORTH: Thank you, Mr. Banks.

11 No further questions.

12 MR. CONNOLLY: No further questions.

13 THE COURT: You're excused, Mr. Banks.

14 THE WITNESS: Thank you, Your Honor.

15 MR. LEE: Your Honor, Ms. Gershengorn is going to
16 present the next witness for us.

17 THE COURT: That's fine.

18 MR. STRAWBRIDGE: We'll call Charlene Kim. We'll
19 just need a minute here.

20 THE COURT: Who did you just call, Mr. Strawbridge?

21 MR. STRAWBRIDGE: Charlene Kim.

22 THE CLERK: Can you please stand and raise your
23 right hand.

24 (CHARLENE KIM duly sworn by the Deputy Clerk.)

25 THE CLERK: Thank you. You may be seated.

1 Can you please state your name and spell your last
2 name for the record.

3 THE WITNESS: Sure. It's Charlene Sun Jin Kim,
4 K-I-M, as in Mary.

5 MR. STRAWBRIDGE: Ms. Kim, with the Court's
6 permission, I'm going to provide you with some materials
7 here.

8 EXAMINATION

9 BY MR. STRAWBRIDGE:

10 Q. Good afternoon, Ms. Kim.

11 A. Hi.

12 Q. My name is Patrick Strawbridge. I'm an attorney for
13 Students for Fair Admissions. We have not met before. You
14 are a 2003 graduate of the University of California at
15 Berkeley; is that correct?

16 A. Yes.

17 Q. And then you earned a master's degree?

18 A. Yes.

19 Q. At New York University?

20 A. That's correct.

21 Q. And do you remember when you earned that?

22 A. 2008 or '09 was when I finished the thesis.

23 Q. And then you began working in the Harvard office of
24 admissions and financial aid in around 2008, 2009?

25 A. In 2008, yes.

1 THE COURT: Ms. Kim, can I ask you to keep your
2 voice up?

3 THE WITNESS: Yes.

4 THE COURT: Thank you.

5 BY MR. STRAWBRIDGE:

6 Q. You've worked in the admissions office then for nine
7 years?

8 A. That's correct.

9 Q. You've been reading applications for that whole time?

10 A. Yes.

11 Q. Last year you estimate you probably read more than a
12 thousand applications?

13 A. Yes. I believe last year I read about 1,100.

14 Q. In a given year during your experience in the office,
15 you'd say you read somewhere between 700 and 1,100
16 applications a year. Does that sound right?

17 A. That does sound right. My first year was closer to 7,
18 800.

19 Q. So if we just sort of took the middle of that range, 900
20 applications over nine years, you would have read more than
21 8,000 applications in your time in the admissions office,
22 correct?

23 A. I would say that's safe to say, yes.

24 Q. You used to read on C docket; is that correct?

25 A. That's right.

1 Q. What states are on C docket? -- or areas, I should say.

2 A. The Greater Los Angeles area.

3 Q. Anything else, or is it just Los Angeles?

4 A. So it's Los Angeles County, parts of the San Fernando
5 Valley, and then parts of San Bernardino County.

6 Q. Dockets in general sometimes have some variances between
7 them in terms of the racial diversity of the populations they
8 cover. Would you agree with that?

9 A. I don't know for a fact, but I would imagine so, given
10 that the country has different makeups demographically.

11 Q. The racial diversity in C docket may well be different
12 than the racial diversity in B docket, for example, correct?

13 A. Sure. I can see that. I grew up in Los Angeles, so I
14 would imagine that -- my experience has been it's a very
15 diverse in many ways kind of place. So I would say so.

16 Q. You used to read on B docket, right?

17 A. On B as in boy?

18 Q. Yes.

19 A. Yes.

20 Q. That covers Colorado and some of the Western states; is
21 that correct?

22 A. That's right, yes.

23 Q. You understand, and I assume you agree, that Harvard does
24 consider race in the process of making its admissions
25 decisions, right?

1 **A.** Yes.

2 **Q.** And one of the reasons that Harvard considers race in its
3 admissions process is that it believes having a class that's
4 composed of different students from different racial
5 backgrounds adds to Harvard's community, correct?

6 **A.** Yes. I think we really want to have a wide variety of
7 lived experiences and backgrounds in the community.

8 **Q.** And race is something that the admissions office
9 considers throughout the admissions process, correct?

10 **A.** Yes. We have discussions throughout the committee
11 process, and that would be one of the many things we discuss.

12 **Q.** And I think -- well, in your familiarity, I'm sure
13 there's a place on the summary sheets that readers receive
14 that lists the race of the applicant. Is that correct?

15 **A.** If the applicant provided it, then the demographic
16 information would be on the summary sheet, yes.

17 **Q.** And in the same way, if the applicant provides his or her
18 race, that's included in the information that appears on the
19 printed docket sheets that the subcommittees use?

20 **A.** Yes.

21 **Q.** And the applicant's race is known to admissions officers
22 during the subcommittee discussions?

23 **A.** Yes, it is.

24 **Q.** At subcommittee meetings?

25 **A.** Yes.

1 **Q.** And the race of the applicants would also be known to the
2 admissions officer during the discussions of the full
3 committee, correct?

4 **A.** That is correct. If it's on the application materials,
5 it would be available to all members of the admissions
6 committee.

7 **Q.** And indeed, during the full committee meeting, Dean
8 Fitzsimmons will provide information that includes the racial
9 breakdown of the admitted class to that point in time; is
10 that correct?

11 **A.** I'm sorry. Can you repeat that?

12 **Q.** Yes. During the full committee meetings, in your
13 experience, Dean Fitzsimmons will sometimes provide
14 information that includes the racial breakdown of the
15 admitted class to date; is that correct?

16 **A.** Yes. So in -- during a few of the years that I've been
17 on the admissions committee -- I don't know if it's been all
18 of the years -- during a time before we go into kind of the
19 final committee meetings, Dean Fitzsimmons has kind of
20 verbally given us an overview of the class as it is looking
21 at the time. So just general demographic information, the
22 gender breakdown, the racial and ethnic breakdown, the number
23 of students who would qualify for our highest amount of
24 financial aid, and also a kind of geographic breakdown of
25 Mid-Atlantic, West Coast, things like that.

1 **Q.** And you've been there for nine years. That covers
2 basically 18 full committee meeting processes?

3 **A.** Well, we didn't have early action for the three years
4 that I was there. And the committee meetings are multiple
5 days and many weeks, but I've been through many cycles, yes.

6 **Q.** More than a dozen at least, correct?

7 **A.** Right.

8 **Q.** You said multiple times Dean Fitzsimmons during this full
9 committee meeting process has conveyed this demographic
10 information, including the racial and ethnic breakdown of the
11 class, correct?

12 **A.** Yes. I do recall that that has happened a handful of
13 times.

14 **Q.** But you don't know why he shares that information, do
15 you?

16 **A.** No, I don't.

17 **Q.** Race is also used at the end of the full committee
18 process?

19 **A.** At the end of the process?

20 **Q.** You're familiar with what's known as lopping?

21 **A.** Yes.

22 **Q.** Just as a reminder, lopping is the process where the
23 class frequently at the end of the full committee process
24 ends up with too many people in it for all the beds that
25 Harvard has, correct?

1 **A.** Yes. So the lop process happens at the end of full
2 committee and then -- well, also kind of at the end of the
3 subcommittee meetings as well, depending on the subcommittee.
4 Sometimes we have too many students at that point as well.
5 So I kind of think of what you're calling the lop happening
6 at least two different stages.

7 **Q.** Okay. And at both those stages, there needs to be a
8 decision made as to who's going to be removed from the class
9 as you get down to the last few spots?

10 **A.** That's correct, yes.

11 **Q.** And one of the information that is -- strike that.

12 There's a form that's filled out with respect to
13 each docket's lops or proposed lops?

14 **A.** Yes. There's a lop list for the full committee lop
15 process.

16 **Q.** And the lop list includes some information about the
17 applicants who are being placed on the lop list?

18 **A.** It does have information on the applicants, yes.

19 **Q.** One of the pieces of information that goes on the lop
20 list is the race or ethnicity of the applicant, correct?

21 **A.** That's correct. I think there are four or five columns
22 on it, and that is one of the columns in addition to the HFAI
23 status, I think the athletic rating, the lineage status.
24 There might have been gender in actually some years.

25 **Q.** By "lineage," you mean whether they're a legacy or not?

1 **A.** Right.

2 **Q.** Let's talk about the training in the admissions office.

3 When you first came to the office, were you are
4 trained by a senior admissions officer?

5 **A.** I was, yes.

6 **Q.** And that training included how to read the files?

7 **A.** Yes, it did.

8 **Q.** It's true, is it not, in your nine years in the
9 admissions office you have never received any written
10 instructions on how to evaluate race when considering
11 applicants?

12 **A.** I don't think that explicit instructions are in the
13 reading procedures.

14 **Q.** You never received any written instructions that are
15 specific to how to use race when considering applicants, have
16 you?

17 **A.** I don't recall written instructions on how to do so.

18 **Q.** As far as reading the files, admissions officers assign a
19 number of ratings to the files?

20 **A.** That's right.

21 **Q.** To the applicants, I should say.

22 And those ratings include the academic rating,
23 correct?

24 **A.** Yes.

25 **Q.** Extracurricular rating?

1 **A.** Yes.

2 **Q.** The personal rating?

3 **A.** Yes.

4 **Q.** And the athletic rating?

5 **A.** That's right, yep.

6 **Q.** And then there's an overall rating, correct?

7 **A.** Yes, that's right.

8 **Q.** You would agree there's nothing in the written procedures
9 of the admissions office that talks about how race should
10 factor into any of those particular numeric ratings, correct?

11 **A.** Right. There's no written instructions on how race would
12 be a factor in any of those numerical ratings.

13 **Q.** Now, it's true that there is an annual orientation in the
14 admissions office where sometimes the general counsel's
15 office comes and provides some basic information about the
16 higher education landscape?

17 **A.** Well, we have -- we have an admissions orientation, and
18 we also have an admissions retreat. I think the one that our
19 general counsel comes to is the orientation.

20 **Q.** And in some of that discussion, without getting into it
21 in too great detail, might cover what the legal standard is
22 for the use of race in higher education, correct?

23 **A.** Yes. I would say he gives us kind of an overview of the
24 legal landscape in higher education and then, you know, kind
25 of talks about things that pertain to our work.

1 **Q.** In your nine years in the Harvard admissions office, you
2 have not participated in any annual training where you were
3 instructed by Dean Fitzsimmons or Director McGrath or anyone
4 else about how you're supposed to consider race when
5 reviewing and evaluating an application at Harvard, have you?

6 **A.** In our various -- in our orientations and in our
7 admissions retreat, my colleagues and I and various other
8 people across the university talk about all the various
9 aspects of our admissions committee. And demographic
10 identities, information, experiences and how those translate
11 into the work that we do is something that we put a lot of
12 thoughtful discussion into.

13 So I don't know if I would characterize it in that
14 sort of black-and-white kind of way. Our committee process
15 is such that it is something that we both do on the job, and
16 then in the retreat and in the orientation we step back and
17 think about things in a larger way.

18 **Q.** I just want you to listen to my question again to make
19 sure you're hearing me correctly.

20 In your nine years at Harvard, is there any annual
21 training where you're instructed by Dean Fitzsimmons or
22 Director McGrath or anyone else about how you're supposed to
23 consider race when reviewing or evaluating an application to
24 Harvard?

25 **A.** So I've been told that race is one of many factors that

1 we can take into account when we are reviewing applications.
2 For example, I gave a presentation to our staff about
3 socioeconomic background and first-generation status. My
4 colleagues have given presentations on various racial groups
5 and identities and things like that. So it's hard for me to
6 think about it in that sort of way.

7 **Q.** You remember giving a deposition in this case, I assume,
8 right?

9 **A.** I do.

10 **Q.** It was just a couple of week ago, right?

11 **A.** That's right.

12 **Q.** It was over at the offices of Wilmer Hale?

13 **A.** That's right.

14 **Q.** You have a copy of the transcript there in front of you.
15 Can you turn to page 22 of the deposition, please.

16 **A.** Yep.

17 **Q.** I'll direct you to the bottom of page 22, line 17.

18 **A.** Line 17?

19 **Q.** I'm sorry. Line 23. Do you see it?

20 **A.** Yes.

21 **Q.** "QUESTION: And is there any annual training where you're
22 instructed by Dean Fitzsimmons or Director McGrath or anyone
23 else about how you're supposed to consider race when
24 reviewing and evaluating an application to Harvard?

25 "ANSWER: I don't recall any sort of explicit

1 directive on how to do so."

2 Were you asked that question?

3 **A.** Yes.

4 **Q.** And did you give that answer?

5 **A.** Yes.

6 MS. GERSHENGORN: Your Honor, can we get additional
7 verification with the next question and answer given that
8 matches what the witness just testified to?

9 THE COURT: Yes.

10 BY MR. STRAWBRIDGE:

11 **Q.** The next question was, "So in your nine years at Harvard,
12 no one else has ever talked with you about the appropriate
13 way to use race in evaluating an application to Harvard,
14 correct?

15 "ANSWER: So each year we have an orientation where
16 our general counsel comes and kind of gives us an update on
17 this landscape of higher education and to know about various
18 considerations in the admissions process. And so, you know,
19 in that the discussion has come up that, you know, race is
20 one of the many considerations that we use in evaluating all
21 these very complex and nuanced individuals."

22 Did you give that answer to that question?

23 **A.** Yes. With very many "you knows," but yes.

24 **Q.** You have never received any training on how to prevent
25 implicit bias from affecting your review of applications to

1 Harvard, have you?

2 **A.** I have not received direct implicit bias training, no.

3 **Q.** You would agree it's possible for any person to exhibit
4 bias, right?

5 **A.** I believe that's true.

6 **Q.** In your view, discrimination can take all forms?

7 **A.** Yes.

8 **Q.** And it's possible, for example, for a woman to
9 discriminate against other women?

10 **A.** Yes.

11 **Q.** And it's possible for one member of a given racial group
12 to discriminate against other members of that racial group,
13 isn't it?

14 **A.** Yes. I think discrimination can indeed take all forms.

15 **Q.** We talked about the fact that one of the reasons that
16 Harvard considers race in its admissions process is because
17 it believes that racial diversity adds to Harvard's
18 community, correct?

19 **A.** Yes.

20 **Q.** I want to talk a little bit about how you assign the
21 score for personal qualities.

22 **A.** Okay.

23 **Q.** You're familiar with that rating, one of the four profile
24 ratings, correct?

25 **A.** I am familiar with it, yes.

1 **Q.** And when considering the personal score, you also think
2 about how the applicant will add to the community, correct?

3 **A.** Yes. Because I think that their personal qualities are a
4 part of the way that they would add to the community, much
5 in -- you know, and in an academic way or extracurricular way
6 or any other way.

7 **Q.** And you would agree, right, that a student's race or
8 ethnicity is part of how they can add to the community?

9 **A.** Yes. I think all of a student's experiences and
10 identities are ways that they can add to a community.

11 **Q.** And in terms of the personal qualities that you are
12 looking for, you would agree that Asian-Americans as a group
13 do not have worse personal qualities, as Harvard views them,
14 than the other groups of applicants who apply to Harvard,
15 correct?

16 **A.** No, they do not.

17 **Q.** And so you would have no explanation if Asian-Americans
18 were to receive year after year lower personal scores than
19 white applicants, for example, correct?

20 **A.** Yep. That's not what I see as a member of the committee.

21 **Q.** That has not been your experience during your nine years
22 on the admissions committee, has it?

23 **A.** It has not.

24 MR. STRAWBRIDGE: No further questions.

25 EXAMINATION

1 BY MS. GERSHENGORN:

2 Q. Good afternoon, Ms. Kim.

3 A. Hi.

4 Q. So Mr. Strawbridge asked you a number of questions about
5 your training in the office. Do you recall his doing that?

6 A. Yes.

7 Q. Let me just ask you a few questions about that. Did you
8 receive training to be an admissions officer when you first
9 joined the office?

10 A. I did.

11 Q. What did that consist of?

12 A. So one of my colleagues, who's no longer with us, was a
13 senior admissions officer, and she trained a lot of the newer
14 people that had just joined staff. So we actually read
15 actual cases from previous years, a good number of them, and
16 rated them and discussed them in a kind of mock committee
17 process. So that was the first part of my training.

18 And then after that, I think my first 50 or 100
19 files were read by other admissions officers who had been
20 there for a longer time. So they would stop into my office
21 and we would go over things that they had seen in my writings
22 or in my ratings, things like that.

23 So that's what I recall from the training. It was
24 nine years ago, ten years ago.

25 Q. Based on your training and your experience, what is your

1 understanding of how race or ethnicity may be used in the
2 admissions process?

3 **A.** So it is one factor that we take into account among the
4 multitude of things that we see in every single candidate's
5 application.

6 **Q.** Is race a factor that you consider when you're assigning
7 the academic rating?

8 **A.** No.

9 **Q.** Is it a factor that you consider when you're assigning an
10 extracurricular rating?

11 **A.** No.

12 **Q.** Is it a factor that you consider when you're assigning
13 the athletic rating?

14 **A.** No.

15 **Q.** Is race a factor that you consider when you're assigning
16 the personal rating?

17 **A.** No.

18 **Q.** What about the preliminary overall rating? Is race a
19 factor that you may consider when you're assigning the
20 preliminary overall rating?

21 **A.** So I would say that sometimes it is, along with other
22 things that I'm looking at, whether an applicant is from a
23 lower socioeconomic background or a rural applicant. Things
24 like that are things that may be captured in the overall
25 rating.

1 **Q.** Thank you. So you've spoken a bit about your work at the
2 admissions office when Mr. Strawbridge was asking you
3 questions. I just want to take a bit of a step back.

4 When did you first start working in the office?

5 **A.** In 2008.

6 **Q.** And what was your position when you first started?

7 **A.** I was an admissions and financial aid officer.

8 **Q.** And what was it about that position that drew you to it?

9 **A.** So it was actually the financial aid portion of it, just
10 because I didn't know that such generous financial aid
11 existed. And I know from my personal experience that cost of
12 college is something that a lot of people in this country are
13 considering when they're looking at schools.

14 And so, you know, I actually had another job offer
15 to work at a different part of Harvard, and I took this job
16 because I was interested in the financial aid piece. And the
17 admissions piece was also part of it.

18 **Q.** And has your position changed over your time in the
19 office?

20 **A.** Yes. I am currently the assistant director of financial
21 aid, a senior admissions officer, and the director of the
22 Harvard first-generation program.

23 **Q.** How long have you held all those roles?

24 **A.** So the director of the Harvard first-generation program
25 is a role that I've held for a little over a year and the

1 other two roles for a few years.

2 **Q.** So let's break those down. What are your
3 responsibilities as a senior admissions officer?

4 **A.** So I read admissions files, and I am a member of the
5 admissions committee. And this year I will be chair of a
6 subcommittee.

7 **Q.** And Mr. Strawbridge asked you about the dockets that you
8 were assigned to previously. What are the dockets that
9 you're currently assigned to?

10 **A.** So I read files on J docket, and I'm chairing Z docket.

11 **Q.** And what are the geographic territories that you are
12 responsible for on your dockets?

13 **A.** On J docket, I read the states of West Virginia,
14 Kentucky, parts of Tennessee, parts of Kansas, and parts of
15 Indiana and other places where the metro area kind of spills
16 into a couple of different states.

17 **Q.** And the Z docket that you'll be chairing?

18 **A.** Z docket is California outside of C docket so the area
19 that I outlined earlier and the Bay Area.

20 **Q.** And turning to your responsibilities as the assistant
21 director of the financial aid program, what are those
22 responsibilities?

23 **A.** So as an assistant director of financial aid, I am a
24 financial aid officer to my caseload of current college
25 students. And then I also help set policy and procedures for

1 the financial aid office.

2 **Q.** And then finally with respect to your three hats, what
3 does your role as director of the first-generation program
4 entail?

5 **A.** So the Harvard first-generation program is an outreach --
6 it has two kind of arms. It's on the one hand an outreach
7 and support program for first-generation -- prospective
8 first-generation college students. And then on the other
9 side is support and community building for the
10 first-generation students that we have on campus.

11 **Q.** I'd like to just ask you a few questions about the
12 financial aid and the first-generation program. We heard
13 some about that this morning. I just want to take you
14 through each of those one at a time.

15 What are the goals of the Harvard financial aid
16 program?

17 **A.** I think the goals of the financial aid program are to
18 make sure that Harvard is affordable to anyone that is
19 admitted and wants to apply. Yeah. And also I think that it
20 helps to kind of be a beacon of accessibility and
21 affordability in higher education.

22 **Q.** And are there different components to that program?

23 **A.** To the financial aid program?

24 **Q.** Yes.

25 **A.** Can you clarify?

1 **Q.** Sure. Before the applicants apply to Harvard College, is
2 there a recruiting component to the HFAI program?

3 **A.** To the HFAI program, yes.

4 So the Harvard financial aid initiative, there
5 is -- much like the first-generation program, on the one hand
6 there's outreach to prospective students. Both of these
7 programs actually hire current Harvard College students who
8 identify with these identities.

9 And when the outreach portion, they send emails,
10 they write blog posts, they're on our social media, and also
11 host tours both in person and actually now increasingly more
12 on a virtual level to prospective students and to
13 community-based organizations across the country.

14 **Q.** And is there travel that's done as part of the financial
15 aid program as well on the recruiting side?

16 **A.** Yes. So HFAI hires -- they actually just completed
17 hiring last week students as a winter break job to go to
18 their hometowns and visit a number of high schools and middle
19 schools to talk about the affordability actually not just of
20 Harvard but a lot of need-blind schools with strong financial
21 aid programs, just to kind of get the message of
22 accessibility and affordability out there.

23 **Q.** You mentioned electronic outreach. Does Harvard have a
24 web page about its financial aid?

25 **A.** Yes.

1 **Q.** If you could turn, to Tab 1 in the binder in front of
2 you. Do you see a document there labeled DX106?

3 **A.** Yes.

4 **Q.** Do you recognize this document?

5 **A.** Yes. This looks to be one of the pages on our financial
6 aid website.

7 MS. GERSHENGORN: Your Honor, we'd move to admit
8 DX106.

9 MR. STRAWBRIDGE: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (Defendant Exhibit No. DX106 admitted.)

12 BY MS. GERSHENGORN:

13 **Q.** Why is this website maintained?

14 **A.** I think it's so our financial aid policy is clear to all
15 family, students who may be interested, and to just get the
16 message of affordability out there.

17 **Q.** And is there a tool on the website to help people figure
18 out the cost of attending Harvard?

19 **A.** Yes, there is. There's a net price calculator. There's
20 actually a link, it looks like, on the second page.

21 **Q.** And if you turn to the second tab in the binder, do you
22 see a document there labeled DX111?

23 **A.** Yes.

24 **Q.** What is DX111?

25 **A.** That looks to be the net price calculator that's on our

1 website.

2 MS. GERSHENGORN: Your Honor, we'd move to admit
3 DX111.

4 MR. STRAWBRIDGE: No objection.

5 THE COURT: It's admitted.

6 (Defendant Exhibit No. DX111 admitted.)

7 BY MS. GERSHENGORN:

8 **Q.** Is there anything special about Harvard's net price
9 calculator?

10 **A.** Well, it was introduced a few years ago when there was a
11 federal mandate for all schools actually to have net price
12 calculators just in the way of cost transparency.

13 But I think that ours is particularly -- very
14 simple and clear. We always have ease of use in mind, that
15 we don't want it to be kind of prohibitive or a lot of tax
16 documents or something are needed for people to fill this
17 out.

18 **Q.** In addition to maintaining the web pages, is there
19 actually a physical space on campus where they can go if they
20 have questions about financial aid?

21 **A.** Yes. Our financial aid office is located on campus in
22 Harvard Square.

23 **Q.** And is that open to the public?

24 **A.** Yes.

25 **Q.** And do prospective applicants go to the office sometimes?

1 **A.** Yes, they do.

2 **Q.** And what kinds of information can people get there?

3 **A.** So they can get our brochure. We actually have current
4 graduate students there at the front to answer kind of
5 general questions about our financial aid, direct people to
6 the net price calculator, give an overview about financial
7 aid, and also often give directions on how to get to other
8 parts of campus.

9 **Q.** So why does Harvard take all of these steps to recruit
10 and assist students who can't afford the tuition?

11 **A.** I think it's because there is a commitment to
12 affordability, to make it affordable. I think that in order
13 to truly make sure that we have the best and brightest
14 students from all backgrounds considering Harvard, it needs
15 to be as affordable as possible. And I think that that's
16 something that the college is quite committed to.

17 **Q.** And so actually talking about the financial aid itself,
18 how does Harvard determine the amount of financial aid that a
19 student receives?

20 **A.** So I think of it as a lot like our admissions process
21 from that we ask for information so students and families
22 fill out the FAFSA, the Free Application For Federal Student
23 Aid, the CSS profile through the College Board. We ask for
24 their tax returns.

25 And we gather all of that information and also it's

1 read by multiple financial aid officers. We actually write a
2 good amount of prose in addition to doing the calculations of
3 income to kind of understand a student's family, you know,
4 what is the family size, are there any sorts of medical
5 expenses or unforeseen expenses that are happening, any
6 stressors, job insecurity, things like that that I think
7 don't come through with just the numbers on someone's tax
8 forms.

9 So this is all information that we take into
10 account and is read by multiple people so that we're being as
11 comprehensive and thoughtful as equitable as possible with
12 our financial aid.

13 **Q.** Is a student's academic success in high school a factor
14 in awarding the financial aid?

15 **A.** No.

16 **Q.** Does Harvard provide athletic scholarships?

17 **A.** No. All financial aid is need based.

18 **Q.** Has Harvard's financial aid budget changed during your
19 time in the office?

20 **A.** Yes, it's changed. It's changed quite a bit. I think
21 it's increased to -- this year I believe it's about
22 \$200 million is the budget for this year's undergraduate
23 financial aid.

24 **Q.** When HFAI was launched, when was that?

25 **A.** In 2004.

1 **Q.** So back in 2004, what were the parameters in terms of the
2 amount of aid that a student could receive based on their
3 family income?

4 **A.** So back then, it was families that had an annual income
5 of under \$40,000 there would be no parent contribution.

6 **Q.** And what are the parameters of HFAI today?

7 **A.** So today, it's families that are making under \$65,000
8 have no parent contribution.

9 **Q.** And about families who make more than 65,000 dollars? Is
10 there financial aid above that?

11 **A.** From 65 to \$150,000, it's up to 10 percent. So if a
12 family is making \$140,000 a year with typical assets, their
13 estimated cost for their child to attend Harvard would be
14 about \$14,000 a year. And then beyond that, families that
15 make over 150, over \$200,000 still qualify for need-based
16 grant aid.

17 **Q.** Are there any cutoffs beyond which a student who needs
18 aid can receive aid?

19 **A.** No. I think that there's no income cutoff. It's just
20 because family situations are so unique and nuanced.

21 **Q.** You mentioned the families with incomes below 65,000
22 where the family contribution is nothing for the students to
23 attend Harvard.

24 What percentage of students fall within that
25 zero-contribution threshold?

1 **A.** About 20 percent of students, one in five of our
2 students.

3 **Q.** And about what percent receive aid overall, what percent
4 of the students?

5 **A.** So I think it's about 55 percent receive aid from our
6 office.

7 **Q.** The Court heard this morning that Harvard doesn't expect
8 students to take out loans. Why is that?

9 **A.** I think it's for the same -- it's all under the same idea
10 of affordability and accessibility that loans are -- that
11 grant makes things more affordable than loans would.

12 **Q.** Are these all details, is this information that's all on
13 Harvard's websites?

14 **A.** Yes.

15 **Q.** And then does HFAI have a role once students are on
16 campus and admitted and coming to the college?

17 **A.** Yes. So the current students, they kind of think about
18 it as a community building is where the focus is.

19 So there are dinners for HFAI students featuring
20 local restaurants, study break sessions. There's the hosting
21 of different kinds of events. For instance, this coming
22 week -- or I guess two weekends from now is first-year family
23 weekend where a lot of the first-year students' families will
24 come to visit.

25 But for low-income and first-generation students,

1 often their families would be unable to attend because it's
2 cost prohibitive. And so there's programming that HFAI and
3 the first-gen program are doing to kind of make sure that
4 these students are included in the celebrations of this
5 weekend.

6 **Q.** And you mentioned that you have some responsibilities
7 with respect to current students. Are financial aid officers
8 paired up with students once they come to campus?

9 **A.** Yes. So once a student has said that they are going to
10 attend, over the summer each student is assigned a financial
11 aid officer. So I'm the financial aid officer for a number
12 of students, and I would stay with them for the four years
13 that they are at the college.

14 **Q.** If I could ask you to turn to Tab 3 in that binder in
15 front of you, do you see a document labeled DX27?

16 **A.** Yes.

17 **Q.** Do you recognize this document?

18 **A.** Yes.

19 **Q.** What is this?

20 **A.** This is a presentation that I actually helped to put
21 together and give about HFAI and first-generation students.

22 MS. GERSHENGORN: Your Honor, we'd move to admit
23 DX27.

24 MR. STRAWBRIDGE: No objection.

25 THE COURT: It's admitted.

1 (Defendant Exhibit No. DX27 admitted.)

2 BY MS. GERSHENGORN:

3 **Q.** Turning to Slide 10 of the presentation, could you just
4 tell me generally what does this slide show?

5 **A.** The slide shows some of the financial and kind of other
6 sorts of resources and support that's available for HFAI
7 students. And actually some of these are for any students
8 that are on financial aid.

9 **Q.** We won't go through all of them, but just for a couple.

10 What is the winter coat fund?

11 **A.** So the winter coat fund is for first-year students who
12 have a zero parent contribution. So it's money that we
13 actually just deposit it into their bank account, about a
14 week and a half ago, for them to buy winter gear for the
15 coming New England winter.

16 **Q.** And what about the midyear considerations?

17 **A.** So the financial aid committee -- we actually have
18 reconsideration meetings throughout the year. But during the
19 end of the calendar year, so in December and then in January,
20 we have specific meetings for families whose financial
21 situations have changed a lot, since again we're using the
22 federal tax returns which are -- often, you know, show a
23 snapshot that's not that recent.

24 So the midyear reconsideration process captures any
25 significant changes, usually a significant loss in income

1 that happened in that current calendar year, so that we can
2 adjust our financial aid.

3 **Q.** Are there other programs to support admitted students
4 that are not on this list?

5 **A.** Yes. So I think two or three years ago we started a
6 start-up grant for first-year zero-parent-contribution
7 students. So they receive a thousand dollars each semester.
8 So \$2,000 total just to help with the transition into
9 college, because we heard from a lot of our students from the
10 most modest backgrounds how financially difficult that
11 transition to college could be.

12 **Q.** So we talk now a lot about the HFAI program. In your
13 view, does the HFAI program foster diversity?

14 **A.** Yes, I believe it does.

15 **Q.** How does it do that?

16 **A.** I think on the outreach and recruitment side that it is
17 putting Harvard and other kind of highly selective,
18 need-blind schools on the radar of students from more modest
19 socioeconomic backgrounds. And that, in turn, will hopefully
20 increase the socioeconomic diversity on campus. And then,
21 once they're there, to build a sense of community I think is
22 such an important thing.

23 **Q.** I want to talk very briefly about the first-generation
24 program. When was that founded?

25 **A.** In 2015, I believe.

1 **Q.** And do you know why that program was created?

2 **A.** It was created because across the country in higher ed
3 there was -- a lot of students were kind of embracing their
4 first-generation college identity. We actually had a student
5 group form on campus, the First Generation Student Union, in
6 2014. So we felt that it was important to have yet another
7 kind of touch point way to reach out to students and to build
8 a more diverse and inclusive community.

9 **Q.** And is that program organized similar to the HFAI program
10 we were talking about?

11 **A.** Yes, it is.

12 **Q.** And if I could just ask you to turn to Tab 4, do you see
13 a document there marked DX103?

14 **A.** I do.

15 **Q.** Do you recognize that?

16 **A.** Yes. This is our landing page on the first-generation
17 students on our website.

18 MS. GERSHENGORN: Your Honor, we'd move to admit
19 DX103.

20 MR. STRAWBRIDGE: No objection.

21 THE COURT: It's admitted.

22 (Defendant Exhibit No. DX103 admitted.)

23 BY MS. GERSHENGORN:

24 **Q.** Who does Harvard view to be a first-generation student?

25 **A.** It's the italicized section at the bottom there. We

1 consider a first-generation college student if they will be
2 in the first generation of their immediate family to graduate
3 from a four-year institution. So the student's parents would
4 not have earned degrees from four-year institutions, but
5 older siblings may have.

6 **Q.** And what percent approximately of Harvard's class is
7 first generation?

8 **A.** I think it's about 15 to 16 percent. The class that we
9 actually just admitted earlier this year was a little over
10 17 percent first gen, which was exciting.

11 **Q.** And what are your observations of how the
12 first-generation program has impacted the Harvard community?

13 **A.** I think that it adds diversity. It adds the experiences
14 of students to the large chorus of all of the other kinds of
15 experiences and backgrounds and things that comprise of the
16 learning experience of college.

17 You know, I think that first-generation college
18 students bring so much with them. And I don't want to say
19 that each student brings the same thing because they don't.
20 All of their experiences that have led to them being at the
21 school and embracing this identity is -- it adds to the
22 learning environment.

23 **Q.** So I want to actually turn your attention to the rating
24 of a file and the profile ratings that we've been hearing a
25 lot about.

1 How do you think about the profile ratings and the
2 role that they play in the admissions process?

3 **A.** So when I think of profile ratings, they're really just
4 handles for me for the application of how to go about
5 discussing the applicant in subcommittee and full committee,
6 things like that.

7 **Q.** Does an applicant get admitted or rejected based solely
8 on the profile ratings?

9 **A.** No.

10 **Q.** And when you're having conversations in subcommittee
11 about applicants, what information about the applicant do you
12 have in front of you?

13 **A.** What information do I have?

14 **Q.** Yes.

15 **A.** The entire application. All of it.

16 **Q.** Do you have the full application file in front of you in
17 addition to the ratings that your colleagues have assigned?

18 **A.** Yes. So all admissions officers have access to all of
19 the application materials of all applicants.

20 **Q.** And so do you have an opportunity to see the ratings that
21 other admissions officers have assigned when you're in
22 subcommittee?

23 **A.** Yes.

24 **Q.** And you also, as you said, you see the full application
25 file at the same time?

1 **A.** Yes.

2 **Q.** And do you have an opportunity in the course of those
3 meetings to compare the materials in the file, the essays,
4 the teacher recommendations, to the ratings that your
5 colleagues have assigned and you've assigned?

6 **A.** Yes.

7 **Q.** And over your nine years in subcommittee meetings, have
8 you ever seen anything that suggests to you that other
9 admissions officers are treating Asian-Americans unfairly
10 when they're assigning the personal rating?

11 **A.** I have not.

12 **Q.** Is that something that you think you would have noticed?

13 **A.** I absolutely think I would have noticed.

14 **Q.** And I want to just talk a little more about the
15 application files that you reviewed.

16 Do you remember application files after you've read
17 them?

18 **A.** I do. Some more than others I'm sure, but I'm surprised
19 by how much things evoke applications that I've read.

20 **Q.** Do you remember the ratings that you've applied to
21 specific applications?

22 **A.** I don't.

23 **Q.** What is it that you do remember from an application?

24 **A.** I think that it depends on the application and the
25 applicant that, you know, sometimes it's an essay. Sometimes

1 it's something that a teacher had said, an anecdote.

2 Sometimes it's something that might have come up in the
3 interview report. It really varies by the student.

4 **Q.** So I'd like to turn your attention to an application
5 file.

6 MS. GERSHENGORN: Your Honor, with your permission,
7 we'll ask the gallery monitors to be turned off and the jury
8 monitors.

9 THE COURT: Turn off the jury box, please, too,
10 Karen.

11 BY MS. GERSHENGORN:

12 **Q.** And if we could turn to Tab 5. And do you see there a
13 document marked DX527?

14 **A.** Yes, I do.

15 **Q.** And do you recognize this?

16 **A.** Yes, I do. It's an application.

17 **Q.** So we've talked about before about how a couple of the
18 things, because of the auto filling on the computer system,
19 there are initials there that are not right and the year
20 that's not right.

21 But if we look at -- directing your attention to
22 page 38 of this document, were you the first reader on this
23 file?

24 **A.** I was, yes.

25 MS. GERSHENGORN: Your Honor, we'd move to admit

1 DX527.

2 MR. STRAWBRIDGE: No objection.

3 THE COURT: It's admitted.

4 MS. GERSHENGORN: Thank you.

5 (Defendant Exhibit No. DX527 admitted.)

6 BY MS. GERSHENGORN:

7 Q. I'd like you to take us through this application. What's
8 the first thing you look at when you're reviewing an
9 application file?

10 A. So I start with the common application.

11 Q. Is that at page 4?

12 A. That is page 4, yes. And just kind of looking over the
13 demographic information that the student provides.

14 Q. The demographic information, is that provided for this
15 applicant?

16 A. Yes, it is.

17 Q. And how did this applicant elect to self-identify in
18 terms of their racial identity?

19 A. So she specifies that she's Asian and more specifically
20 other South Asian/Tibetan.

21 Q. And what else would you look at on these pages?

22 A. You know, I would look at kind of her address, where she
23 lives, the languages spoken at home. What would stand out to
24 me is that she had requested a fee waiver, and that she's
25 eligible to receive an ACT or SAT testing waiver from the

1 College Board.

2 **Q.** And what would that indicate to you?

3 **A.** It would suggest to me that she might be a high school
4 student that would be from a lower income background and
5 therefore an HFAI student.

6 **Q.** And on that next page where the information is provided
7 about the parents, is there information there that you would
8 find relevant in your consideration of the applicant?

9 **A.** Yes. So I see that she has two parents. They're
10 married. Her mother is an RN, a registered nurse. She is
11 employed. And it looks like she has some schooling, but she
12 never got a four-year degree.

13 And then I would see that her father is listed as a
14 homemaker and also has some schooling but does not have a
15 degree. And I do see here that she has an older sibling that
16 attends college.

17 This would show me that she has an RN parent and a
18 homemaker parent, and that she's also a first-generation
19 college student.

20 **Q.** So how would the parental occupations be relevant for you
21 when thinking about this applicant?

22 **A.** For this particular applicant, it would be something I
23 would be thinking about when looking over the application.
24 Perhaps she chose an interest in medicine or something.
25 Perhaps she's been able to do some shadowing or an internship

1 at the hospital where her mother works maybe.

2 And there may be more information about dad being a
3 homemaker, was it a choice that the family had made, you
4 know, are there other sorts of situations or instances in the
5 family that would have resulted in the snapshot that I see
6 here.

7 **Q.** Then turning to the next pages, are those the next things
8 that you would look at in reviewing this application file?

9 **A.** Yes. I would look at either her high school -- it seems
10 that she's affiliated with a community-based organization. I
11 see her self-reported GPA and then also the current courses
12 she's taking for the, year which she's taking seven AP
13 courses for the senior year. So she's clearly taking a very
14 rigorous curriculum.

15 And then she's listed some honors she's received.
16 National History Day, first-place county champion. Seems to
17 be something she's very involved in. The Hugh O'Brian Youth
18 Leadership she's participated in. These are things that I
19 would notice.

20 **Q.** And then her testing scores on the next page?

21 **A.** She provides her SAT testing and then some AP subject
22 tests, which there are a good number of. She's clearly taken
23 AP classes in her junior year as well.

24 **Q.** And then would you go to the next page of her activities.

25 **A.** Yes. I would look at her activities and everything that

1 she has kind of told us about. She was treasurer and vice
2 president of her key club, co-captain of tennis, and you
3 know, that she's involved in the art and architecture club.

4 And I think that -- and she's also, I see, involved
5 in Students For a Free Tibet, which she self-identifies as
6 Tibetan. She speaks Tibetan at home. Chose this tie to her
7 culture.

8 And actually the sense that I get from just looking
9 at her activities is that she's clearly very involved in
10 community service, that there's a clear thread here of what
11 she's passionate about, where she's spending her time, where
12 her mind is going. Yeah.

13 **Q.** And then what would you look at next?

14 **A.** I would look at her essay. And this is actually what I
15 remember about this student.

16 **Q.** And that's the next page, page 10?

17 **A.** Yes.

18 **Q.** And what is it that stood out to you about this essay?

19 **A.** So she describes going back to the Tibetan refugee
20 community in India where her relatives are and essentially
21 witnessing caste discrimination within this community, and
22 just how she kind of thoughtfully ties it to her own
23 experiences in America. And just the larger sentiments and
24 themes that she's kind of putting together in this is just
25 really -- it's the kind of thing where you really have to

1 read it. I'm not doing justice to what a beautiful essay it
2 is and the thought and the clarity of mind and the presence
3 of a person, that no one but she could have written this
4 essay.

5 **Q.** Then what would you look at after that?

6 **A.** I would look at the various information that she's
7 applying. I would look at her various interests. She's
8 interested in engineering, but it seems at the 4 level.

9 So 1 is most sure, 5 is likely to change.

10 And then I would see her activities, political
11 groups, environmental groups, community service. These are
12 things that are not surprising to me, given what I've seen
13 her activities to be and what the sense of person that's
14 being conveyed so far.

15 **Q.** And after that, would you look at a supplemental essay
16 that she wrote there? Is it on 15?

17 **A.** Yup, she did. This is an essay that she's -- she's
18 talking about a painting that she studied in her AP art
19 history class, and she ties it to the self-immolators in
20 their struggle for a free Tibet.

21 On a variety of levels, the fact that she's kind of
22 tying this painting from hundreds of years ago to very
23 current events to things in her life, the way she's kind of
24 thinking about and connecting all of these things is very
25 convincing, very well done.

1 And just in the same way that actually I think her
2 personal essay before, and there's this kind of -- it turns
3 to the reader and there's this kind of together, you know, we
4 need to embark on this together. We can do this.

5 You can already see she's sort of conveying these
6 sort of things, but there's this forward-looking sort of
7 action, passion that's there.

8 **Q.** And after that, would you turn to the school report, 16
9 and 17?

10 **A.** Yes. So afterwards I would look at the school report. I
11 have would look at the profile.

12 And so it looks like this profile, the school
13 provides a profile. So I would take into account things
14 about the school: the graduating class size; the percentage
15 that's going on to four-year or two-year institutions; the
16 number of students that are on free and reduced lunch. These
17 are all things that tell us a lot about a school.

18 And then I would also look at the descriptors that
19 the guidance counselor uses about the student. So here she
20 says she's ambitious, diligent, dedicated, dependable,
21 goal-oriented, natural-born leader, and that the student is
22 recommended enthusiastically.

23 **Q.** And then does that person provide a letter for you at 20?

24 **A.** Yes. So there's a letter on page 20. This letter just
25 kind of goes more into who she is as a person and of course

1 talks about her extracurricular activities, her hard work,
2 her perseverance. She calls her ambitious, diligent,
3 dedicate, dependable, goal-oriented. She's extremely
4 conscientious, highly motivated, admired for her humility,
5 concern for others, as well as her intellectual ability and
6 clear-sightedness.

7 The moral fiber and intellectual curiosity she has
8 to offer will enable her to embrace the direct and plentiful
9 learning available at the college level.

10 And in the paragraph before that, just talking
11 about kind of her experiences traveling back to her home
12 country and her connections to her extended family and
13 culture. "These experiences have not only opened her eyes up
14 to be appreciate to the opportunities and resources made
15 available to her education here in America, but also lit a
16 fire inside her to do everything she can to help the less
17 fortunate and those in need here in America through her
18 community service and club activities mentioned above."

19 It's the same person that's kind of coming through
20 in all of this.

21 **Q.** And then after that, would you look at the teacher
22 recommendations?

23 **A.** Yes. I would look at her transcript. She has very
24 strong curriculum, and she has all As. And then her teacher
25 evaluation I would look at. When we are reading in paper, I

1 would mark up the pages. Now that we are reading online, we
2 have a highlighting tool, so I would be highlighting parts of
3 these letters that I would want to be reading out or calling
4 attention to in our discussions in committee.

5 In this essay, this teacher says she's a very
6 special young woman of great potential with her quiet skills,
7 determination to succeed, and high intelligence. She will be
8 an asset to any organization.

9 And earlier this essay says she is especially
10 interested in following a science and academic career, though
11 she is also an-award winning poet, which is not anything that
12 comes through in any other parts of the file thus far. So
13 again, it shows kind of a breadth of interest in a variety of
14 ways.

15 **Q.** And then she has another teacher evaluation after that?

16 **A.** Yes, she does.

17 So what I would notice here is this teacher, the
18 check marks are all the top few, top 1 percent. The
19 descriptors, "intellectually gifted, exceptionally
20 thoughtful, enormous potential, kind and caring, determined,
21 committed to excellence, concerned about the world, lover
22 learning, fun to be with, friendly, accepting of others, a
23 person who will make a difference."

24 And just looking at the length of this letter at a
25 large kind of public school where teachers are under enormous

1 workloads, clearly the student has impressed this teacher
2 quite a bit. That's such a range of descriptors and yet is
3 consistent with who is coming to life in this file.

4 **Q.** And so after you reviewed the second teacher
5 recommendation, what would you do then?

6 **A.** I would love to see if there are any other
7 recommendations, any other materials to look at. And if not,
8 then I would sit and begin writing out prose and then go back
9 to the summary sheet and start putting in the profile rating
10 numbers.

11 **Q.** In a case like this, would you be filling in the ratings
12 as you were going through the file?

13 **A.** No. Usually I read through it, make like a first pass
14 and read through everything. And then, yeah.

15 **Q.** You assign all of the ratings together at the end then?

16 **A.** Yes. Usually. And sometimes I actually write the prose
17 first because that helps to -- that helps me to clarify my
18 thoughts.

19 **Q.** Just looking at your ratings on page 38, we talked a lot
20 about who this applicant is as a person.

21 **A.** Yes.

22 **Q.** What's the personal rating that you assigned to this
23 applicant?

24 **A.** I gave her a 2-.

25 **Q.** And in your nine years of serving, this seems like more

1 like a 1 to me.

2 Have you ever given an applicant a personal rating
3 of 1?

4 **A.** I have not.

5 **Q.** What about 1-?

6 **A.** I don't believe I have.

7 **Q.** So what does a rating of 2- mean?

8 **A.** It's a very, very strong rating.

9 **Q.** And so did you advocate for this applicant in the
10 subcommittee and the committee?

11 **A.** Yes, I did.

12 **Q.** And what would you have said about this applicant there?

13 **A.** I think my kind of summary there is where I would -- you
14 know, essentially what I would say, I like the sound of her.
15 Her voice really comes through in her personal essays. She
16 seems to have a very solid sense of self and a highly
17 developed sense of empathy and open-mindedness.

18 T2, which is the second teacher report, is
19 extremely helpful and lengthy and helps to flesh out her
20 activities, while EC's, which are extracurriculars, may not
21 be as dazzling as some, she's clearly a natural for PBH,
22 which is our community service organization on campus and is
23 deeply tied to her culture.

24 With HFAI info, so her socioeconomic background,
25 and AIV, which is the alumni interview, maybe want to

1 discuss. "Slate context may not be too much of an issue but
2 something to keep in mind."

3 Q. What is "slate context" referring to there?

4 A. That's all of the applications from her high school.

5 Q. Do you know if this applicant was admitted?

6 A. Yes, I believe she was.

7 Q. I'm just going to look at -- very, very quickly at two
8 files, have you look at two files.

9 MS. GERSHENGORN: These are for students who are
10 going to testify later on in the case, Your Honor.

11 BY MS. GERSHENGORN:

12 Q. If you could, just look behind Tab 6.

13 A. Okay.

14 Q. Do you see a document there marked SA4?

15 A. Yes, I do.

16 Q. And do you recognize this document?

17 A. Yes, I do.

18 Q. What is this?

19 A. It's an application for Sarah Cole.

20 Q. Were you a reader of this application?

21 A. Yes. I was the first reader.

22 MS. GERSHENGORN: Move to admit SA4.

23 MR. STRAWBRIDGE: No objection.

24 THE COURT: It's admitted.

25 (Defendant Exhibit No. SA4 admitted.)

1 BY MS. GERSHENGORN:

2 Q. And just one or two questions on this very quickly.

3 That first page, this is a different form than we
4 were just looking at. Those handwritten markings, where
5 would those have come from?

6 A. So the handwritten markings are mostly mine. And then
7 there are also some from the second reader.

8 Q. And toward the top there where it says "A other" and "A
9 other 2 and 3," what are those indicating?

10 A. Those are the parents. And it shows the parent college
11 information and then it looks like the other reader also
12 wrote in where the parents work.

13 Q. And then if you could, turn to Tab 7.

14 THE COURT: Is this your handwriting on the second
15 page of SA4?

16 THE WITNESS: So my handwriting is that top
17 portion. And then the two bottom lines are the handwriting
18 of the second reader.

19 THE COURT: What is C plus C?

20 THE WITNESS: C plus C is coast to coast. So
21 that's -- I'm sorry. My handwriting is a little hard to
22 read. It says I think she should look very strong coast to
23 coast. Meaning whether we get into the full committee
24 context, she will probably look very strong across the board.

25 BY MS. GERSHENGORN:

1 **Q.** And is "coast to coast" a phrase that you've used in
2 other applications?

3 **A.** Yes.

4 THE COURT: Possibly HFAI and definitely not --

5 THE WITNESS: -- fancy.

6 THE COURT: Can you --

7 THE WITNESS: Would it be helpful for me to read
8 it?

9 THE COURT: No. I've got the rest of it. I'm just
10 asking you to fill in the words I can't actually read.

11 Can you read the one below. I know it's not your
12 writing. Is that CSK --

13 THE WITNESS: Sums up. She writes CSK sums up.
14 CSK are my initials. One to do with a great IV. Hope we can
15 get her.

16 THE COURT: One to do with a great --

17 THE WITNESS: -- interview. Yeah. So if we had a
18 great interview.

19 THE COURT: Okay. Sorry. I know she's going to
20 testify, but she may not be able to read it either. I wanted
21 to get it while I had it.

22 BY MS. GERSHENGORN:

23 **Q.** I just wanted to ask. You were mentioning for Her Honor
24 coast to coast. Is that something you use with applicants of
25 all backgrounds and races and ethnicities?

1 **A.** Yes. So I think because of the areas that I cover, I see
2 a lot of HFAI students and a lot of rural students. So those
3 are the ways that come to mind that I've -- that's what kind
4 of comes to mind. But essentially it's when we're going into
5 the full committee process that they'll look pretty strong,
6 yeah.

7 **Q.** If you would go to Tab 7. Do you recognize this document
8 marked SA3?

9 **A.** SA3. This looks to be an application for the class of
10 2017.

11 **Q.** And were you a reader on this application?

12 **A.** I was not.

13 **Q.** Was this in the C docket that you were discussing with
14 Mr. Strawbridge?

15 **A.** Yes.

16 **Q.** And were you on C docket at the time that this applicant
17 applied?

18 **A.** Yes. Class of 2017.

19 **Q.** And as we indicated, this is a student who's going to be
20 testifying. Would you have seen this file in connection with
21 your work on the C docket?

22 **A.** Yes.

23 MS. GERSHENGORN: We move to admit SA3.

24 MR. STRAWBRIDGE: No objection.

25 THE COURT: It's admitted.

1 (Defendant Exhibit No. SA3 admitted.)

2 BY MS. GERSHENGORN:

3 Q. Ms. Kim, you've mentioned this a few times, but how long
4 have you worked as a Harvard admissions officer in Harvard's
5 admissions and financial aid office?

6 A. A little over nine years.

7 Q. I think you discussed with Mr. Strawbridge about how many
8 files you read, and I think he had calculated to it maybe
9 around 8,000 application files. Does that sound about right?

10 A. I guess so. I haven't counted them, but that would sound
11 right.

12 Q. And fair to say that you've discussed thousands of
13 applications in subcommittee or full committee?

14 A. Yes, I would say so.

15 Q. Have you ever seen another admissions officer demonstrate
16 bias against an applicant because of the applicant's race?

17 A. I have not.

18 Q. Have you ever seen another admissions officer demonstrate
19 bias against an Asian-American applicant?

20 A. I have not.

21 Q. Have you ever yourself acted in a biased way against an
22 applicant because of their race?

23 A. No.

24 Q. When you're considering whether to admit an applicant, is
25 their race ever a negative factor?

1 **A.** It is not.

2 **Q.** Have you ever admitted an applicant because of his or her
3 race?

4 **A.** Solely because --

5 **Q.** Solely.

6 **A.** No.

7 **Q.** Have you ever rejected an applicant because of his or her
8 race?

9 **A.** No.

10 **Q.** Have you ever been instructed to admit a target number of
11 African-American students?

12 **A.** No.

13 **Q.** Mr. Strawbridge was speaking with you earlier about the
14 numbers that Dean Fitzsimmons speaks with you about. Were
15 you ever instructed to admit a target number of students of
16 any race or ethnicity?

17 **A.** I have never been instructed to admit any target of any
18 demographic group or anything of the sort.

19 **Q.** Based on your years working in the admissions office,
20 what is your opinion of the review process, the whole-person
21 review process that Harvard College uses?

22 **A.** I mean, I -- so I didn't do admissions work before I
23 started at Harvard. I worked in higher education. I didn't
24 have any ties to Harvard or anything.

25 So I think that when I went into it, what really

1 struck me was just how thoughtful and transparent the policy
2 is. I think in an imperfect world, I think we're kind of --
3 I can't think of a better way to do this sort of work.

4 **Q.** Ms. Kim, are you familiar with the specific allegations
5 in this case?

6 **A.** I am. I am.

7 **Q.** And are you familiar with the fact that one of those
8 allegations is that the Harvard College admissions office
9 where you work is discriminating against Asian-Americans?

10 **A.** I am aware of that.

11 **Q.** What is your reaction to that allegation?

12 **A.** So I think initially it was a surprise. You know, I
13 think now just concern. It's not what I know our office to
14 be. It's not who I am. And I'm -- you know, I would never
15 be part of a process that would discriminate against anybody,
16 let alone people that looked like me, like my family, like my
17 friends, like my daughter.

18 And so I'm actually really grateful to be able to
19 be here to share my little bit of my experience on the
20 admissions committee. Because, you know -- yeah, I'm not
21 here to say that it's perfect, but I know that we don't
22 discriminate against anyone. I know that we are thoughtful
23 people, and that we're doing the best that we can do.

24 MS. GERSHENGORN: Thank you, Ms. Kim.

25 I have no further questions.

1 MR. STRAWBRIDGE: Nothing else for this witness,
2 Your Honor.

3 THE COURT: Can I ask you one question before you
4 go?

5 THE WITNESS: Sure.

6 THE COURT: When you talk about all kinds of
7 diversity, I take it that also means geographic diversity?

8 THE WITNESS: Yes.

9 THE COURT: I know there's not targets numbers, but
10 when you go for geographic diversity, how do you -- if
11 there's not a target number, how are you making sure you have
12 that?

13 THE WITNESS: I think -- so the entire -- the
14 committee is broken up into subcommittees. So all
15 subcommittees admit students. But we try to have as much
16 representation as possible, but it's not guaranteed. There
17 are a number of years where we didn't have any students from
18 the state of Wyoming or where sometimes there are parts of
19 the world or parts of the United States that are
20 underrepresented. So I think we do what we can in our
21 outreach efforts and hope that we see them in the applicant
22 pool.

23 But beyond that, there's no way for us to do that.
24 Sometimes all 50 states are not represented. Sometimes not
25 all of the different kinds of groups as represented as

1 perhaps it would have been nice to have been the case.

2 THE COURT: Is it ever like we have to find someone
3 from Wyoming?

4 THE WITNESS: No. I can think of a couple years
5 where -- because I also do financial aid applications and
6 things like that, it was like, wait a minute, we don't have
7 any students from Wyoming, was one state. And I can't
8 remember the other state where we just didn't have students.
9 And that's the nature of our process.

10 Does that answer your question?

11 THE COURT: I was just thinking you have kind of
12 like geographic quotas, and then you have a geographic area
13 that's, say, heavily Asian that you could get a quota on that
14 geographic area, you could be tamping down the Asian
15 applicants to get the geographic diversity.

16 THE WITNESS: We don't have quotas by geographic
17 area, is my understanding, especially when we're kind of
18 entering the final weeks. We're not kind of saying, oh,
19 there are too few students from the Mid-Atlantic, so we need
20 to keep some in. That's not the way it is.

21 THE COURT: Okay. Now I've asked her some
22 questions. I know you've all passed the witness, but I'll
23 give you a chance to follow up if you want to.

24 MR. STRAWBRIDGE: No, Your Honor. Thank you.

25 MS. GERSHENGORN: No, Your Honor.

1 THE COURT: This time you really are excused.

2 MS. HACKER: Your Honor, we're ready for the next
3 witness. But given that we're going a little bit later
4 today, do you want to take an afternoon break?

5 THE COURT: I'm happy to take a break if that's
6 what you all want to do.

7 We'll take a break until 3:00 and go until you want
8 to go.

9 (Court recessed at 2:44 p.m.)

10 MS. HACKER: We're ready to proceed, Your Honor.

11 THE COURT: Yes. When you're ready, go ahead.

12 MS. HACKER: SFFA calls Tia Ray.

13 (TIA RAY duly sworn by the Deputy Clerk.)

14 THE CLERK: Thank you. You may be seated.

15 Can you please state your name and spell your last
16 name for the record.

17 THE WITNESS: My name is Tia Mari Ray, R-A-Y.

18 EXAMINATION

19 BY MS. HACKER:

20 **Q.** Good afternoon, Ms. Ray.

21 **A.** Good afternoon.

22 **Q.** My name is Kat Hacker. We haven't had an opportunity to
23 meet before. Thank you for being here today. I'd like to
24 start with how you became involved at Harvard.

25 You actually graduated from Harvard, right?

1 **A.** Yes.

2 **Q.** That was in 2012?

3 **A.** Yes.

4 **Q.** After you got your undergraduate degree, you took a job
5 working in the admissions office?

6 **A.** Correct.

7 **Q.** Your first job there was as an admissions officer?

8 **A.** Yes.

9 **Q.** And about three years later, you were promoted to senior
10 admissions officer?

11 **A.** Yes.

12 **Q.** Let's jump in today by talking about how Harvard uses
13 race in the admissions process because, after all, that's why
14 we're all here.

15 I think we can agree on one thing that Harvard does
16 use race as at least one factor in the admissions process,
17 right?

18 **A.** Yes, it can be. For competitive applicants, we may
19 provide a tip.

20 **Q.** What's your understanding for why Harvard provides that
21 tip for race in the admissions office?

22 **A.** It's one factor that we may consider as we're looking at
23 students as whole people who may contribute to our campus
24 community.

25 **Q.** Do you consider that factor in the admissions process to

1 help make sure that Harvard builds a community that reflects
2 a diversity of cultures?

3 **A.** We use it as one factor to ensure that we have a class
4 that's diverse in many different ways.

5 **Q.** And to ensure that Harvard has a diverse community,
6 right?

7 **A.** From my understanding, yes.

8 **Q.** You don't know of any written document at Harvard that
9 describes how race should play into the admissions process,
10 right?

11 **A.** Can you repeat your question?

12 **Q.** Sure. You don't know of any written document at Harvard
13 that describes how race should play into the admissions
14 process; is that right?

15 **A.** That is incorrect.

16 **Q.** Ms. Ray, do you remember giving a deposition in this
17 case?

18 **A.** Yes.

19 MS. HACKER: May I approach, Your Honor?

20 THE COURT: Yes.

21 BY MS. HACKER:

22 **Q.** Ms. Ray, you were under oath when you gave this
23 deposition, right?

24 **A.** Yes.

25 **Q.** I'd like to turn your attention to page 128 in your

1 deposition, if you'll flip with me there.

2 And I'd like to focus your attention on lines 1
3 through 5. You were asked, "Is there any written document at
4 Harvard that describes how racial identity should play into
5 the admissions process?

6 And you answered, "Not that I know of."

7 Were you asked that question and did you give that
8 answer at your deposition?

9 **A.** Yes.

10 **Q.** Now, it's not a written document, but you've actually
11 given presentations to admissions officers about diversity
12 before, right?

13 **A.** Yes, about diversity, but not how to take that into
14 consideration in the admissions process.

15 **Q.** And that was my next question actually.

16 Those presentations, they weren't designed to
17 instruct admissions officers on when to use race in the
18 admissions process, right?

19 **A.** Correct.

20 **Q.** One of the presentations you gave, actually the first
21 presentation you gave, was in the fall of 2013; is that
22 right?

23 **A.** Yes.

24 **Q.** Let's talk a little bit about that presentation, and I'm
25 going to pull up P99. You have a copy of that in the binder

1 in front of you, if you'd like to look at a hard copy, though
2 I'll zoom in on the screen to try to make it easier to see.

3 Do you recognize P99 as the notes that you took in
4 preparing to give this presentation in the fall of 2013?

5 **A.** Yes.

6 **Q.** And the handwriting we see on this document is yours,
7 correct?

8 **A.** Yes, that is correct.

9 MS. HACKER: SFFA offers P99.

10 MS. CONLEY: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (Plaintiff Exhibit No. P99 admitted.)

13 BY MS. HACKER:

14 **Q.** Let's start at the top, Ms. Ray. And here you say,
15 "Noticed that there are many questions around the way racial
16 identity should play into the admissions process."

17 Do you see that?

18 **A.** Yes.

19 **Q.** So you found that admissions officers had questions about
20 how they were supposed to use race in evaluating
21 applications?

22 **A.** We noticed that there may be some questions, and this
23 presentation was designed to provide greater context for
24 admissions officers' work.

25 **Q.** And that's what you go on to explain here, right, "We

1 wanted to see if we could provide some context to better
2 situate and understand the questions that we want to be
3 asking and not asking when evaluating applicants."

4 That's what it says here?

5 **A.** Yes.

6 **Q.** If we turn to the next page, we can see -- let me zoom in
7 on this so you can see it a little bit better on the screen.

8 We see that there's a section here called "Testing
9 Distributions." Do you see that?

10 **A.** Yes.

11 **Q.** And under that subtitle you note, "Although around
12 1.5 million students took the SATs, we see some stark
13 realities about educational access and attainment when
14 looking at the actual score ranges of different demographic
15 groups."

16 Do you see that?

17 **A.** Yes.

18 **Q.** Then you continue to note a little further down the page,
19 "For example, if we're thinking of the number of black
20 students in the entire country scoring above 700, we're
21 looking at a little over 2,000. And this is students in the
22 entire country, not necessarily students who are even
23 applying here."

24 And you have a big exclamation mark next to that.
25 Do you see that?

1 **A.** Yes.

2 **Q.** And then there's a similar explanation for native -- the
3 reference to native there is Native American students, right?

4 **A.** Yes.

5 **Q.** And there's a similar reference for Mexican-American
6 students, right?

7 **A.** Yes.

8 **Q.** Let's take a look at one more exhibit that talks about
9 the same thing. I want to turn your attention to D19.

10 Ms. Ray, do you recognize this document as the
11 slides from the presentation you gave to new admissions
12 officers the next year in 2014?

13 **A.** Yes.

14 MS. HACKER: SFFA offers D19.

15 MS. CONLEY: No objection.

16 THE COURT: It's admitted.

17 (Defendant Exhibit No. DX19 admitted.)

18 BY MS. HACKER:

19 **Q.** Ms. Ray, I'd like to turn to page 10 in this document.
20 I've got it up on the screen.

21 We see some approximate numbers here of students
22 scoring above 700 on the SATs, right?

23 **A.** Yes.

24 **Q.** And we see that just looking at the math scores, we see
25 roughly 2,000 black students who score above 700 on the SATs?

1 **A.** Yes.

2 **Q.** And that's compared to just under 50,000 Asian-American
3 students who score above 700 on the SATs, right?

4 **A.** Yes.

5 **Q.** And that AAPI is Asian-American Pacific Islander?

6 **A.** Yes.

7 **Q.** Given these numbers, it's more uncommon to see an
8 African-American applicant scoring over 700 on their SATs
9 than an Asian-American applicant, right?

10 **A.** From my experience typically, yes.

11 **Q.** And did you provide these numbers -- I think earlier you
12 said you gave this presentation to give admissions officers
13 greater context, right?

14 **A.** Yes.

15 **Q.** So you provided these numbers to give the admissions
16 officers some context on these testing distributions?

17 **A.** Yes, in part.

18 **Q.** So you were training your fellow admissions officers to
19 understand the relative rarity of these applicants; is that
20 right?

21 **A.** No. It was to allow admissions officers to better be
22 able to situate the potential access to things like SAT
23 testing that may be impacted by a variety of factors.

24 **Q.** And you wanted your fellow admissions officers to
25 understand how that variety of factors can contribute to the

1 relative rarity of some of these different demographic groups
2 getting high scores on SATs, right?

3 **A.** It was more so to provide information regarding the types
4 of things that may influence a student's ability to have
5 access to things like even taking an exam.

6 **Q.** And what influences a student's ability to take an exam
7 can actually affect the numbers as we've seen, right?

8 **A.** It may, alongside many other factors.

9 **Q.** Let's take a look at P75. Do you see that document,
10 Ms. Ray?

11 **A.** Yes.

12 **Q.** You recognize this as the personal interview report? I
13 think it says that right up here in the corner that is used
14 for interviewers to fill out when they meet with applicants?

15 **A.** For alumni interviewers, yes.

16 MS. HACKER: SFFA offers P75.

17 MS. CONLEY: No objection.

18 THE COURT: It's admitted.

19 (Defendant Exhibit No. P75 admitted.)

20 BY MS. HACKER:

21 **Q.** If you turn with me to the third page, Ms. Ray, there's a
22 section here on overall rating. Do you see that?

23 **A.** Yes.

24 **Q.** And interviewers can check some boxes down here at the
25 bottom that they think pertain to certain applicants, right?

1 **A.** Yes.

2 **Q.** And we see a box that's called "Diamond in the Rough."
3 Do you see that?

4 **A.** Yes.

5 **Q.** Does that describe one of the things that admissions
6 officers and alumni interviewers should be on the lookout
7 for, as we've been talking about, this unique diamond in the
8 rough?

9 **A.** Can you repeat your question?

10 **Q.** Sure. We see a box here called "Diamond in the Rough,"
11 right?

12 **A.** Yes.

13 **Q.** So obviously this is one thing that Harvard is looking
14 for in potential applicants, people who are the rare
15 diamond-in-the rough applicant, right?

16 **A.** No. I've taken that to mean that someone can be
17 described as a diamond in the rough.

18 **Q.** And someone that would be described as a diamond in the
19 rough is someone that Harvard is looking for?

20 **A.** Potentially, alongside many other things that may apply
21 to interviews. As you can see, there's a variety of boxes
22 that can be checked both positively and less positively in
23 that section.

24 **Q.** Do you think that diamond in the rough is taken in a
25 negative way?

1 **A.** I think it would depend entirely on the description of
2 the interview.

3 **Q.** But it's more likely, right, when somebody checks this
4 box, diamond in the rough, after meeting an applicant,
5 they're using that to convey that they like this applicant
6 and they think they would add to Harvard's class in some
7 positive way, right?

8 **A.** Typically, yes.

9 **Q.** Now, I'd like to turn back to your presentation to talk
10 about one more thing. That was D19. Let's turn to page 50.
11 What I'd like to focus on is the bottom bullet on this page.

12 It says, "Regardless of economic background, black
13 students' experiences are impacted by racial bias, both
14 explicit and implicit."

15 Do you see that?

16 **A.** Yes.

17 **Q.** You'd agree that it's not just black students, though,
18 who are impacted by explicit and implicit bias, right?

19 **A.** Correct.

20 **Q.** For example, Asian-American students are also impacted by
21 explicit bias?

22 **A.** Yes.

23 **Q.** And Asian-American students are also impacted by implicit
24 bias?

25 **A.** Yes, as we're discussing broader sociological issues.

1 **Q.** Now let's talk about what you actually do as an
2 admissions officer to decide who to admit to Harvard.

3 Admissions officers read over student application
4 files and provide a number of ratings, right?

5 **A.** Yes.

6 **Q.** Let's talk through those ratings, starting with academic.
7 In assigning a student an academic rating, you look at those
8 students' qualifications, right?

9 **A.** Correct.

10 **Q.** You don't take race into account when you assign an
11 academic rating?

12 **A.** Correct.

13 **Q.** You've never noticed that Asian-Americans on average have
14 worse academic qualifications than other races or
15 ethnicities?

16 **A.** Correct.

17 **Q.** In assigning an applicant an extracurricular score, you
18 look at things like involvement in activities at their high
19 school or in their community?

20 **A.** Correct.

21 **Q.** You don't take race into account when you assign an
22 applicant an extracurricular rating?

23 **A.** That's also correct.

24 **Q.** And you've never noticed that Asian-Americans on average
25 are less involved in activities at their high schools or in

1 their communities?

2 **A.** Correct.

3 **Q.** In assigning an applicant an athletic score, you look at
4 their involvement in athletic activities, right?

5 **A.** Yes.

6 **Q.** You don't take race into account when assigning someone
7 an athletic rating?

8 **A.** We do not.

9 **Q.** You haven't noticed that Asian-Americans are less
10 involved in athletic activities than other races or
11 ethnicities?

12 **A.** Correct.

13 **Q.** In giving an applicant a personal rating, you're looking
14 at their personal qualities and character, right?

15 **A.** Yes.

16 **Q.** You're generally looking for is this person a good
17 person?

18 **A.** That's one type of question we may ask, yes.

19 **Q.** Another type of question you may ask -- I think we've
20 heard this from some other people -- is what the applicant
21 could add to the community at Harvard?

22 **A.** In terms of their personality, yes.

23 **Q.** You're looking at all sorts of things that go into what
24 someone could add to the community at Harvard, right?

25 **A.** Yes.

1 **Q.** You don't take a student's race into account, though,
2 when determining an applicant's personal rating, right?

3 **A.** Correct.

4 **Q.** The last rating I'd like to talk through is the school
5 support ratings. You calculate those by reading the
6 recommendation letters and assessing the strength of the
7 school report based on those, right?

8 **A.** Yes.

9 **Q.** You don't take a student's race into account when
10 determining their school support rating?

11 **A.** Can you repeat your question?

12 **Q.** Sure. You don't take race into account when determining
13 those school support ratings, right?

14 **A.** Correct.

15 **Q.** Like all the other ratings we've talked about, you
16 haven't noticed that one group of students tend to have
17 different school support ratings based on race, right?

18 **A.** Not from my experience.

19 **Q.** So once the admissions officers read and rate the
20 application files, then the next step in the process are the
21 subcommittee and committee meetings; is that right?

22 **A.** Yes.

23 **Q.** In these meetings, you get together as a group in a
24 conference room, I imagine, and you put the application up on
25 a big projector, right?

1 **A.** Yes.

2 **Q.** One of the components that you project up onto a big
3 screen is the applicant's race?

4 **A.** Yes. Alongside other features of the application.

5 **Q.** By the time you're in the regular action subcommittee
6 meetings, it's around January or February, right?

7 **A.** Yes.

8 **Q.** By that point, you've reviewed all the early action
9 candidates?

10 **A.** Yes.

11 **Q.** And you've been reviewing the regular action applicants
12 for weeks at that point, right?

13 **A.** Yes.

14 **Q.** So in the subcommittee meeting, you're deciding whether
15 to provisionally admit or reject an applicant; is that right?

16 **A.** Yes.

17 **Q.** And one of the factors you consider, among others, in
18 deciding whether to admit or reject an applicant is their
19 race?

20 **A.** Yes, it may be.

21 **Q.** When deciding whether an applicant should move from the
22 subcommittee to the full committee meeting, you take race
23 into account as at least one factor among others, right?

24 **A.** It can be one factor among many that we're considering.

25 **Q.** And then after the subcommittee meetings, you get to the

1 full committee meeting process?

2 **A.** Yes.

3 **Q.** At the beginning of the full committee meeting, someone
4 announces the racial composition of the class that has been
5 tentatively admitted, right?

6 **A.** Sometimes, yes.

7 **Q.** You have, in fact, learned the racial composition of the
8 students that Harvard has admitted to that date at the
9 beginning of the full committee process, right?

10 **A.** Sometimes, yes.

11 **Q.** And I assume when you learn the racial composition of the
12 students, it's Dean Fitzsimmons who tells the committee those
13 numbers?

14 **A.** Sorry. Could you repeat your question?

15 **Q.** Is it Dean Fitzsimmons who tells those numbers to the
16 committee at the beginning of the full committee meetings?

17 **A.** Yes. He may share numbers about the broad demographics
18 of the class, including racial or ethnic identity, geography,
19 intended concentration, as some examples.

20 **Q.** And Dean Fitzsimmons does that at the very beginning of
21 the full committee meeting?

22 **A.** Yes.

23 **Q.** Then in the full committee meeting you go through a
24 similar process of putting an applicant's file on a big
25 screen, right?

1 **A.** Yes.

2 **Q.** And the same information including an applicant's race
3 goes up on that big screen?

4 **A.** Yes.

5 **Q.** Then after you review a student and discuss them, a vote
6 might be taken; is that right?

7 **A.** Correct.

8 **Q.** But whether a vote happens depends on the strength of the
9 case and the feeling in the room?

10 **A.** Yes.

11 **Q.** Again when you're making those decisions to admit or
12 reject an applicant, one of the factors you consider is an
13 applicant's race?

14 **A.** Sorry. Can you repeat why you are question?

15 **Q.** That's okay. I'm happy to.

16 When you're making these decisions in the full
17 committee meetings to admit or reject an applicant, one of
18 the factors you consider is an applicant's race, right?

19 **A.** One of the factors that we may consider as we're deciding
20 who to admit may be race. But that would never be something
21 that would tip somebody out of the class or a reason for
22 denial.

23 **Q.** And race is one factor, among others, you consider in
24 deciding whether to deny admission to an applicant, right?

25 **A.** No.

1 **Q.** Race is one factor you consider in deciding among the
2 many other factors that you use to determine who you will
3 deny admission to, right?

4 **A.** No.

5 **Q.** Ms. Ray, if you could, turn to page 85 of your deposition
6 with me. I'm going to focus your attention on lines 9
7 through 13. Let me know when you get there.

8 **A.** I am there.

9 **Q.** "QUESTION: So when deciding who you will deny admission
10 to, race is a factor, is one factor among many that you use
11 to determine who you will deny admission to, correct?

12 "ANSWER: Yes."

13 MS. CONLEY: Your Honor, for completion, I'd ask
14 that the testimony at page 84, lines 4 through 12 be read.
15 BY MS. HACKER:

16 **Q.** Let's look at the previous page, too, Ms. Ray.

17 You were asked, "Sure. But it could be one factor
18 among -- a race could be one factor among many in deciding to
19 deny an applicant admission to Harvard, correct?

20 "ANSWER: No. Race is one factor that we are
21 considering as we evaluate a student's applicant file but it
22 is not a determining factor."

23 Were you asked those questions and did you give
24 those answers at your deposition?

25 **A.** Yes.

1 **Q.** Then just like at the beginning, when you get to the end
2 of the full committee meeting, someone announces the racial
3 composition of the admitted students; is that right?

4 **A.** Sometimes, yes.

5 **Q.** To be clear, you have learned the information about the
6 demographic and racial composition of the admitted students
7 at the end of the full committee process, right?

8 **A.** Yes.

9 **Q.** After the full committee process ends, then the next step
10 is the lopping process, right?

11 **A.** Yes.

12 **Q.** At that point, you have to decide which students to
13 remove from the tentatively admitted class?

14 **A.** Correct.

15 **Q.** Let's take a look together at a lop list so we can see
16 what actually goes into this practice. Look at P200.

17 Ms. Ray, do you recognize this as an example of a
18 lop list?

19 **A.** Yes.

20 **Q.** And we see it's labeled "Docket Lop List" here at the
21 top?

22 **A.** Yes.

23 **Q.** You filled out forms like this when deciding who to lop,
24 correct?

25 **A.** Yes.

1 **Q.** And this is for docket K. We see that noted here at the
2 top?

3 **A.** Yes.

4 **Q.** You were assigned docket K; is that right?

5 **A.** At one point, yes.

6 **Q.** Were you assigned docket K for the class of 2017?

7 **A.** Yes.

8 **Q.** And we can see that these initials TMR refer to you,
9 correct, because you were on the docket that year?

10 **A.** Yes.

11 **Q.** And do you recognize the handwriting as Sally Harty's
12 handwriting in this document?

13 **A.** Yes.

14 MS. HACKER: Your Honor, SFFA offered P200.

15 MS. CONLEY: No objection, Your Honor.

16 THE COURT: It's admitted.

17 (Plaintiff Exhibit No. P200 admitted.)

18 BY MS. HACKER:

19 **Q.** What we're looking at, Ms. Ray, each line, and we can see
20 numbers 1, 2, 3, and we can see these lines continuing down
21 the page, these all represent an applicant who the docket is
22 considering moving from the provisional admit pile to the
23 rejected pile. Is that right?

24 **A.** Yes.

25 **Q.** And for each applicant, we see four factors in these

1 columns. The first one is LIN. Do you see that?

2 **A.** Yes.

3 **Q.** That stands for lineage?

4 **A.** Correct.

5 **Q.** The next one is ETH. That stands for ethnicity, right?

6 **A.** Yes.

7 **Q.** And we also see on here ATH for athlete; is that right?

8 **A.** Yes.

9 **Q.** And then we see a reference to HFAI or financial aid,
10 right?

11 **A.** Yes.

12 **Q.** So these are the four factors that you're looking at when
13 deciding whether to lop a student; is that right?

14 **A.** No.

15 **Q.** Is it your testimony that you don't consider these four
16 factors when deciding whether to lop a student?

17 **A.** It's my testimony that these are not the only factors
18 that we're considering when we're determining who to remove
19 from the tentatively admitted class.

20 **Q.** But these are four factors that you take into account in
21 deciding whether to lop a student, right?

22 **A.** These are several of the many we may take into
23 consideration.

24 **Q.** And one of the many included in that consideration is
25 ethnicity?

1 **A.** Yes. As we're determining the candidates.

2 **Q.** I'd like to take a look at the Xs down here in this
3 column. Do you see these Xs? I'll put a square around them.
4 Do you see that?

5 **A.** Yes.

6 **Q.** So we see a squiggly line through the middle of the page.
7 Above that line are the seven applicants who are getting
8 lopped, correct? They're getting moved to the rejected pool?

9 **A.** Potentially, yes.

10 **Q.** Do you see that it says "seven out" up here at the top?

11 **A.** Yes.

12 **Q.** And then there's seven applicants who are getting taken
13 out of the provisional admit pool?

14 **A.** Yes. Those are seven potential candidates to be removed.

15 **Q.** And then below the line we have four candidates that are
16 not getting removed from the provisional admit pool. Do you
17 see that?

18 **A.** I see those candidates.

19 **Q.** And three of the four candidates below that line who are
20 not getting lopped out of the provisional admit pools have an
21 X in the ethnicity box; is that right?

22 **A.** Well, I'd like to clarify that the candidates below that
23 line may also be removed from the tentatively admitted class.

24 **Q.** But what we see on this document are four candidates that
25 at least as of this point are not getting removed from the

1 tentatively admitted class?

2 **A.** It would depend entirely on the discussion with the full
3 committee.

4 **Q.** On this piece of paper, Ms. Ray, do you see that there's
5 a dividing line between the candidates that are being
6 suggested above the line to be removed from the provisional
7 admit pool and those below, right?

8 **A.** Yes, I see that line.

9 **Q.** And of the four candidates below that line, three of them
10 have an X mark in the ethnicity box?

11 **A.** I see that the candidates below the line have that X
12 mark.

13 **Q.** You'd agree with me that the categories listed on this
14 document can be important when determining which students to
15 lop, right?

16 **A.** They can be important, as can many other factors.

17 **Q.** Let's move on to talking about your role as the director
18 of the undergraduate minority recruitment program.

19 You were given the job as assistant director of
20 that program in 2012 when you started working in the
21 admissions office, right?

22 **A.** Yes.

23 **Q.** That was immediately after you got your undergraduate
24 degree?

25 **A.** Very shortly after, yes.

1 **Q.** Then you were promoted to the position as director of the
2 undergraduate minority recruitment program within three
3 years, right?

4 **A.** Yes.

5 **Q.** Besides you, there's only one other full-time employee
6 with the undergrad minority recruitment program?

7 **A.** Yes.

8 **Q.** That's the assistant director?

9 **A.** Correct.

10 **Q.** Then there's the between two and roughly ten students who
11 work for the program, depending on the time of year?

12 **A.** Correct.

13 **Q.** So there's never more than a dozen people working for the
14 undergraduate minority recruitment program?

15 **A.** That's incorrect.

16 **Q.** Is there a time of year when there are more students who
17 work for the program?

18 **A.** Yes.

19 **Q.** How many students at a maximum work for the program?

20 **A.** 25 to 30.

21 **Q.** And has that changed in the last year?

22 **A.** No.

23 **Q.** So you have 25 to 30 students who can be employed -- I
24 assume that's during the school year, not during the summer?

25 **A.** Correct.

1 **Q.** But then the two full-time employees also work both
2 school year and during the summer, right?

3 **A.** The admissions office employees, yes.

4 **Q.** Do you think it would be helpful to have more full-time
5 employees?

6 **A.** Potentially, yes.

7 **Q.** You could potentially get more accomplished the more
8 employees you had, right? Pretty basic idea?

9 **A.** Sometimes, yes.

10 **Q.** Let's take a look at P55 together.

11 Ms. Ray, do you recognize this as an email that
12 Amy -- is it Amy Lavoie?

13 **A.** Yes, that's correct.

14 **Q.** This is an email that Amy Lavoie sent to you and a number
15 of other people in October of 2013, right?

16 **A.** Correct.

17 MS. HACKER: SFFA offers P55.

18 MS. CONLEY: No objection.

19 THE COURT: It's admitted.

20 (Plaintiff Exhibit No. P55 admitted.)

21 BY MS. HACKER:

22 **Q.** Ms. Ray, I'd like to look at page 11 in this document
23 together. I'll zoom in a little bit because the text is
24 pretty small. This is an example of an email that gets sent
25 out through the undergraduate minority recruitment program to

1 potential applicants, right?

2 **A.** Sorry. Can you repeat your question?

3 **Q.** Sure. What we're looking at is just an email that gets
4 sent out through the undergraduate minority recruitment
5 program to potential applicants to Harvard?

6 **A.** Correct. This is an example from that year 2013.

7 **Q.** The purpose of these emails is to encourage minorities to
8 apply to Harvard, right?

9 **A.** Correct.

10 **Q.** You send emails like this. You mentioned what year this
11 is, but these type of emails get sent out every year, right?

12 **A.** Yes. Emails like this but with similar but more specific
13 content.

14 **Q.** But you don't know if these emails are effective in
15 increasing the number of minorities who apply to Harvard,
16 right?

17 **A.** I don't know in terms of specific statistics, but from my
18 anecdotal knowledge, yes, I find them effective.

19 **Q.** Ms. Ray, I'd like you to turn to page 112 of your
20 deposition. I'd like to turn your attention to lines 4
21 through 8.

22 "QUESTION: And you find that these types of emails
23 are effective in increasing the unable of minorities who
24 apply to Harvard?

25 "ANSWER: I don't know."

1 Were you asked that question and did you give that
2 answer?

3 MS. CONLEY: Your Honor, in interest of
4 completeness, I'd like for the remaining four lines to be
5 read.

6 MS. HACKER: Happy to read them.

7 MS. CONLEY: Thank you.

8 BY MS. HACKER:

9 **Q.** The next question, "Why don't you know?

10 "ANSWER: I don't know the complete statistics on
11 application rates of students who are on our search list."

12 Were you asked those questions and did you give
13 those answers, Ms. Ray?

14 **A.** Yes.

15 **Q.** So if these emails, since you don't know the full
16 statistics, if these emails aren't effective, would you want
17 to take other steps to try to encourage minorities to apply
18 to Harvard?

19 **A.** Yes. As I noted also, I may not know the full
20 statistics. However, from anecdotal knowledge, I know that
21 the emails are effective, and the UMRP does take many other
22 steps to recruit students of color.

23 **Q.** If the statistics showed you could be more effective,
24 would you want to do more to encourage minorities to apply to
25 Harvard?

1 **A.** Yes.

2 **Q.** And I'm assuming -- strike that.

3 Ms. Ray, I'd like to end today by talking about
4 something we started with, and that's why Harvard uses race
5 in admissions. You already explained to us that Harvard uses
6 race in admissions to help assemble a diverse community.

7 Do you remember that?

8 **A.** Yes.

9 **Q.** And you already told us that when assigning an applicant
10 a personal rating, you consider, among lots of things, what
11 someone could add to the community, right?

12 **A.** Sorry. Can you repeat your question?

13 **Q.** Sure. What you told us earlier is when you're assigning
14 an applicant a personal rating, one thing, among many others
15 that you consider, is what that applicant could add to the
16 community; is that right?

17 **A.** Correct. In terms of personality and potential impact.

18 **Q.** Are you sure that you never consider how an applicant's
19 race could add diversity to the community when you're
20 assigning a personal rating?

21 **A.** I'm sure.

22 MS. HACKER: Pass the witness.

23 MS. CONLEY: Your Honor, if we could just have one
24 minute to set up.

25 THE COURT: Of course.

1 MS. CONLEY: Thank you.

2 EXAMINATION

3 BY MS. CONLEY:

4 Q. Good afternoon, Ms. Ray.

5 A. Good afternoon.

6 Q. I want to pick up on something that Ms. Hacker asked you
7 about with respect to written guidance in the office with
8 respect to how to use race in the admissions process.

9 Ms. Hacker asked you the question whether it was
10 your understanding that there was no written guidance as to
11 how to use race in admissions. And you told her that was
12 incorrect.

13 Do you recall when she asked you that?

14 A. Yes.

15 Q. And then she showed you your deposition testimony in
16 which you said that there was no written guidance at the time
17 of your deposition?

18 A. Correct.

19 Q. Now, what were you referring to today when you told
20 Ms. Hacker that she was incorrect?

21 A. I was referring to reading procedures for the class of
22 two thousand and -- recent reading procedures that reinforced
23 what we had already been doing in practice but were created
24 after the day of my deposition.

25 Q. So were you referring to reading procedures that were

1 issued this year?

2 **A.** Yes, I was.

3 **Q.** And did those reading procedures that were issued this
4 year reflect any changes to the admissions policy?

5 **A.** Absolutely not. It was just a reinforcement of what we
6 had already been doing in practice.

7 **Q.** So when you answered at your deposition that there were
8 no written procedures on the use of race, you were talking
9 about at that particular time, correct?

10 **A.** Correct.

11 **Q.** But sitting here today when you said that there were
12 reading procedures, you were talking about reading procedures
13 that had been issued after your deposition; is that right?

14 **A.** That is correct.

15 **Q.** Now, Ms. Hacker asked you a few questions about whether
16 and when applicants can get a tip for race. Do you recall
17 those questions?

18 **A.** Yes, I do.

19 **Q.** Ms. Ray, can race provide a tip to an applicant in the
20 admissions process?

21 **A.** Yes, it can.

22 **Q.** And can an applicant's race make his or her case more
23 compelling for admission?

24 **A.** Yes, it can.

25 **Q.** In what circumstances can an applicant's race make his or

1 her application more compelling?

2 **A.** For a competitive applicant, race may provide a tip in
3 our pool.

4 **Q.** Is race the only factor that could provide a tip or make
5 an applicant's application more compelling?

6 **A.** No. In fact, there are a few other examples. For
7 example, if someone was from a sparse area of the country,
8 they may receive a tip for that. Or if someone has a
9 particular extracurricular talent, say they're a very
10 talented cellist, that may also be another example of a tip.

11 **Q.** And is race ever a determinative factor in someone's
12 admission?

13 **A.** Absolutely not.

14 **Q.** Ms. Ray, is race ever a factor in deciding whether to
15 deny an applicant admission?

16 **A.** It is not.

17 **Q.** And is race ever used as a negative factor when making an
18 admissions decision on a particular applicant?

19 **A.** It is never.

20 **Q.** Now, Ms. Hacker asked you a few questions about what's
21 known as the lop list. Do you recall those questions?

22 **A.** Yes.

23 **Q.** And when candidates are listed on a lop list, are they
24 automatically or definitely removed from the admitted class
25 at that point?

1 **A.** No.

2 **Q.** And so what happens to candidates that are listed on a
3 lop list?

4 **A.** They'll be discussed with the full admissions committee.

5 **Q.** And so even after the lop list is created, there could
6 still be an opportunity for those particular applicants to be
7 discussed?

8 **A.** Certainly. Every applicant that is on a lop list is
9 presented to the full committee for discussion as a potential
10 student to be removed from the class.

11 **Q.** Ms. Hacker also asked you earlier about Dean Fitzsimmons
12 sharing statistics about the admitted class during the
13 admissions process. Do you recall those questions?

14 **A.** Yes.

15 **Q.** Based on your experience, what kinds of statistics does
16 Dean Fitzsimmons share with the full committee process?

17 **A.** He may share broad demographic information about the
18 class. For example, the number of male and female students
19 in the class, intended concentration, where tentatively
20 admitted students are from geographically, as well as race,
21 ethnicity, if you're a first-generation student, as some
22 examples.

23 **Q.** Ms. Ray, during your time in the admissions office, has
24 Dean Fitzsimmons shared only numbers about the race
25 demographics about the class?

1 **A.** No.

2 **Q.** And during your time in the admissions office, have you
3 ever been instructed to admit a target number of students
4 from any particular racial or ethnic background?

5 **A.** Absolutely not.

6 **Q.** Are you aware of any effort to reached a target number of
7 admitted students from a particular racial or ethnic
8 background?

9 **A.** No. We have no targets of any kind.

10 **Q.** Taking a step back for a moment and turning back to your
11 role in the office, is it correct to say you wear two hats?
12 You're both a senior admissions officer as well as the
13 director of UMRP?

14 **A.** Yes.

15 **Q.** How long have you been the detector of UMRP?

16 **A.** About three years.

17 **Q.** And what are your responsibilities in that role?

18 **A.** I oversee, train, and hire our undergraduate coordinators
19 as part of our recruitment efforts for students of color.

20 **Q.** And you went to Harvard for undergraduate school, right?

21 **A.** Yes.

22 **Q.** And when you went to Harvard, did you have a role with
23 respect to the UMRP?

24 **A.** Yes. I was a UMRP coordinator in the Native American
25 division.

1 **Q.** Who does the UMRP recruit?

2 **A.** We recruit students of color. So students who
3 self-identify as Asian-American, African-American, Latinx,
4 Mexican-American, and Native American.

5 **Q.** And how is it that the UMRP is organized?

6 **A.** We're organized in divisions that do outreach to those
7 populations.

8 **Q.** And what are the particular divisions?

9 **A.** Great. So we have African-American division,
10 Asian-American, Latinx, Mexican-American, and Native American
11 division.

12 **Q.** Ms. Hacker asked you a bit about who works for UMRP, and
13 you referenced undergraduate students who are known as
14 student coordinators?

15 **A.** Yes.

16 **Q.** And how are student coordinators assigned to those five
17 divisions that you just mentioned?

18 **A.** Typically they're assigned to the divisions that they
19 themselves also self-identify with.

20 **Q.** Why does the UMRP staff the divisions with student
21 coordinators who share the same racial background as the
22 particular division? Why do you staff it that way?

23 **A.** Well, we found that it can be very powerful to have that
24 be one point of connection for undergraduate students with
25 prospective students. It can sometimes allow the prospective

1 students to really envision themselves on Harvard's campus,
2 since they may have questions about what it's like to be a
3 student of color at an institution that is historically
4 predominantly white.

5 **Q.** Ms. Ray, has UMRP made any efforts to recruit applicants
6 from different Asian-American ethnic backgrounds?

7 **A.** Yes. So for example, our UMRP coordinators are often
8 from a variety of Asian-American ethnic backgrounds. They
9 may do things like post about, as a Filipino student, their
10 own experience through the college admissions process. They
11 may post online on our blog about their involvement in a
12 Southeast Asian dance show on our campus every spring. And
13 we also will go to various events at high schools or college
14 fairs that may particularly reach Asian-American populations.

15 **Q.** When during the year does UMRP begin recruiting students
16 of color?

17 **A.** Typically during the spring of their junior year.

18 **Q.** Let's pull up DD63.

19 Ms. Ray, can you describe what year-round
20 activities that UMRP would undertake in order to recruit
21 students of color?

22 **A.** So year-round, the UMRP coordinators are able to provide
23 information sessions and tours for visiting groups that serve
24 populations that are predominantly students of color.

25 Usually these groups are community-based organizations or

1 public school groups. And our coordinators are able to speak
2 a little bit about life as a Harvard undergraduate and show
3 them around our campus.

4 And year-round our coordinators also post on social
5 media. So they'll post on the admissions office blog. They
6 will take over our Snapchat and show people around campus as
7 a sort of day in the life as a student at Harvard, and
8 recently they've also begun posting on Instagram on a weekly
9 basis.

10 **Q.** For those of us born after 1985, can you talk about what
11 Snapchat and Instagram are and how they help with UMRP's
12 recruiting?

13 **A.** Sure. So with Snapchat, essentially it's a video feed
14 that you can add to throughout the course of the day.

15 So our student coordinators will take short videos
16 potentially showcasing them walking to class or at a
17 particular event. And it allows prospective students to see
18 some short video clips that can provide a little bit more
19 insight and show a little bit more about the personality at
20 Harvard. So it can be really useful for prospective students
21 to get a glimpse into that.

22 **Q.** And when does UMRP typically first reach out to a
23 potential applicant on an individual basis?

24 **A.** Typically during the spring of their junior year.

25 **Q.** Pull up DD64.

1 So, Ms. Ray, could you please walk the Court
2 through the recruiting efforts that UMRP undertakes starting
3 in the spring of a potential applicant's junior year in high
4 school?

5 **A.** Sure. So during the spring, we'll do our first round of
6 email outreach to prospective applicants. And we identify
7 students for that UMRP list in a few different ways. So
8 we'll send to all self-identified students of color on
9 Harvard's search list. We also will send an email to
10 students who have opted in to receive communications about
11 the UMRP on the admissions office website. And we'll add in
12 names that we get from students who have expressed interest
13 in Harvard through a partnership with a nationwide
14 community-based organization network.

15 **Q.** And how does UMRP identify which high school students to
16 send emails to?

17 **A.** Sure. So it's all self-identified students of color on
18 that search list as well as a few other information streams
19 that we'll pull together.

20 **Q.** What information do the UMRP outreach emails contain?

21 **A.** In typical practice, they're addressed now from an
22 individual coordinator who will share information about what
23 it's like at Harvard. So they may provide information about
24 their own application process and journey to Harvard,
25 information on cultural life and cultural communities at

1 Harvard, financial aid, and other types of things.

2 And there's also a lot of information on how to get
3 in touch with the UMRP in case any students have questions
4 about the admissions process or life at Harvard.

5 **Q.** Approximately how many high school students per year
6 receive recruiting emails from the UMRP?

7 **A.** Right. So it will vary from year to year. But as an
8 example, last year about 85,000 students were reached through
9 these emails.

10 **Q.** And are students who don't receive outreach emails from
11 UMRP disadvantaged in the admissions process?

12 **A.** Not at all. All students who apply go through the same
13 application process and evaluation process.

14 **Q.** Does UMRP continue its recruitment efforts into the
15 summer after a prospective applicant's junior year?

16 **A.** Yes.

17 **Q.** What kinds of recruiting activities does UMRP engage in
18 during the summer?

19 **A.** During the summer, we send another round of emails to an
20 even more expanded list of students. The list has typically
21 grown by that point. And we also have a few summer-specific
22 travel opportunities that come up through the UMRP.

23 So an admissions officer will go, for example, to a
24 week-long college access program targeted towards native
25 students, called College Horizons, which has happened for the

1 past 20 years.

2 And we travel to a few other events typically on a
3 yearly basis as well. For example, to an information session
4 at Leadership Enterprise For a Diverse America, a program
5 through Princeton University that targets low-income,
6 first-gen, and students of color.

7 And we'll also try to attend events like college
8 fairs and events with other community-based college access
9 organizations that are in the nearby area, as our schedule
10 allows.

11 **Q.** Does UMRP continue its recruiting activities through the
12 fall of a prospective applicant's senior year?

13 **A.** Yes.

14 **Q.** DD 6.6, please.

15 What recruiting efforts does UMRP take during the
16 fall?

17 **A.** In the fall, we'll send our final email to the students
18 who have now become seniors in high school, again to an
19 ever-expanding list, and we begin the process of hiring and
20 training hometown recruiters.

21 **Q.** What are hometown recruiters?

22 **A.** Hometown recruiters are other Harvard undergraduate
23 students, a cohort of students who we hire to go back to
24 their hometowns to give presentations about life as an
25 undergraduate student at Harvard.

1 **Q.** And how does UMRP select who to hire as the hometown
2 recruiters?

3 **A.** We try to hire students from a variety of backgrounds
4 from a variety of geographical areas. And through this,
5 we're hoping -- it's always our hope that we can particularly
6 target schools or communities where we think that there are
7 students of color who might particularly benefit from hearing
8 messaging about the college application process and life at
9 Harvard. We're hoping to get students to think about Harvard
10 but also higher education more generally.

11 **Q.** Does the UMRP continue its recruitment efforts into the
12 winter?

13 **A.** Yes.

14 **Q.** DD 6.7.

15 And can you walk us through what the UMRP does
16 during the winter of a prospective applicant's senior year?

17 **A.** Sure. During the winter, our hometown recruiters will be
18 on the road conducting all of their hometown visits.
19 Typically this is a cohort of anywhere from 15 to 20
20 upperclassman students -- or Harvard undergraduate students
21 that are doing these presentations, and they go all over the
22 country.

23 So in January our recruiters are on the road in
24 places -- like last year, for example, Los Angeles, South
25 Carolina, Missouri, Alabama. We try to hit as many places as

1 possible. And through this in a typical year, we'll visit
2 about 200 to 250 high schools.

3 **Q.** How does UMRP decide what high schools to visit?

4 **A.** Working with the admissions officer who reads for a
5 particular area, they help us to craft an itinerary that may
6 allow us to visit high schools and middle schools that we
7 think might really have a place for messaging about higher
8 education and about Harvard to really resonate. So we're
9 always looking to create pipelines of students.

10 **Q.** Now, once a student is admitted, does UMRP continue its
11 recruitment efforts with respect to that particular student?

12 **A.** Yes.

13 **Q.** How so?

14 If we could pull up DD 6.8, please.

15 **A.** So during the spring, we really focus on being in touch
16 with students who have recently been admitted to Harvard.

17 So we do this in a couple of different ways. The
18 first way is by connecting with students through a
19 "call-a-thon." In this call-a-thon, we call all
20 self-identified students of color who have been admitted to
21 Harvard. So typically this is about 800 students. Obviously
22 depending on how many students are admitted, that drives how
23 many students we call.

24 And we also have programming through Visitas, which
25 is our weekend for visiting our students.

1 **Q.** Does UMRP contact every admitted Asian-American student?

2 **A.** Yes.

3 **Q.** And you mentioned Visitas. What is Visitas?

4 **A.** Visitas is our weekend for all admitted students when we
5 welcome them to campus to showcase what it's really like for
6 undergraduate students. So they'll learn about living in our
7 residence halls, about student life, and have opportunities
8 to see campus and ask lots and lots of questions.

9 **Q.** How does UMRP use Visitas to recruit admitted students of
10 color?

11 **A.** In a few different ways. So during Visitas, we run a
12 specific hosting program through the UMRP. So we ask
13 admitted students if they'd like to be hosted through the
14 UMRP by an undergraduate student who is volunteering through
15 our program.

16 And we also have a few items of programming during
17 our visiting weekend. So we have a reception for all
18 admitted students of color, and we also have a panel
19 discussion where our coordinators discuss life as a student
20 of color at Harvard.

21 **Q.** And for Visitas, how does UMRP match admitted students of
22 color to a student host?

23 **A.** So our undergraduate coordinators work very hard to make
24 hand matches between our prospective students and our
25 undergraduate volunteers. So they take into consideration

1 things like the way each student may identify racially or
2 ethnically as one item.

3 But they also look for things like a shared
4 hometown, similar academic interest, or maybe overlap in
5 extracurricular activity interest as well.

6 **Q.** And why is shared racial identity a consideration in
7 connecting prospective students with current Harvard College
8 students during Visitas?

9 **A.** From my own experience and from what I've seen and heard,
10 that can be one point of connection that undergraduates and
11 prospective students can use to really see what its like as a
12 student of color at Harvard.

13 They may have similar questions about what it's
14 like to be a person of color on Harvard's campus, and that
15 can then be one point of connection that will lead them to
16 having discussions about other aspects of life at Harvard, in
17 the classroom, in our dorms, and in other activities as well.

18 **Q.** Approximately how many students of color are hosted at
19 Visitas through the UMRP?

20 **A.** It varies from year to year, but typically several
21 hundred.

22 **Q.** We've talked a bit about the number of recruitment
23 activities that UMRP engages in throughout the year to
24 recruit students of color. Why does UMRP undertake all these
25 recruiting efforts throughout the year?

1 **A.** We think recruitment is incredibly important, and it's
2 vital to ensure that talented students across the entire
3 country are really considering Harvard as an option.

4 From my own experience in hearing the types of
5 questions that students ask, I know that it can be really
6 important to demystify what an institution like Harvard might
7 be like for someone. And through these recruitment efforts,
8 we can hopefully inspire students to think about applying to
9 Harvard and persuade them to attend once they're admitted.

10 **Q.** And, Ms. Ray, do you believe that there's a continued
11 need for the recruiting efforts that UMRP undertakes?

12 **A.** Absolutely.

13 **Q.** Let's talk a little bit about your role as an admissions
14 officer.

15 THE COURT: Let me ask about UMRP.

16 UMRP is -- I think it's the only place I've seen
17 that sort of separates out Mexican-Americans.

18 THE WITNESS: Yes.

19 THE COURT: Why is that and how did that happen?
20 I'm just wondering why you have sort of Mexican-Americans
21 singled out but we have this monolithic Asian group.

22 When you're ultimately tracking Mexican-American
23 statistics, is that done separately or is that lumped in with
24 like --

25 THE WITNESS: From my understanding, that's an

1 inheritance that when the UMRP started there were lots of
2 Chicano students on campus who self-identified in that way.
3 And that's why that's been identified as a separate division.

4 However, when we're reporting out statistics, from
5 my understanding it's in terms of Hispanic and Latinx overall
6 and not separating out Mexican-American.

7 BY MS. CONLEY:

8 **Q.** Ms. Ray, we talked a little bit about training. Did you
9 receive training on how to evaluate applications when you
10 first started as an admissions officer?

11 **A.** Yes.

12 **Q.** Can you describe that training?

13 **A.** In the admissions office when I first started, I had
14 several sources of training about how to read an application.

15 So the first kind of programming that was done, it
16 was led by an associate director of admissions at the time
17 and other admissions office staff, and we walked through,
18 with other new admissions officers, the components of an
19 application, the ratings, and how to evaluate applicants.

20 We also read files and participated in a mock
21 subcommittee process that taught us how committee worked and
22 how to be a good committee member.

23 And the final component of that was reading
24 application files once the process started and having my
25 committee chairs and other admissions office staff members

1 read files after I did, about the first 100 or so files. And
2 they were able to provide some feedback on my evaluations.

3 **Q.** And did you receive that training when you first came on
4 board in 2012?

5 **A.** Yes, I did.

6 **Q.** In the course of that training, did you receive guidance
7 when evaluating an applicant's race when evaluating that
8 applicant as a whole?

9 **A.** Yes, I did.

10 **Q.** What did you learn when you received that training on how
11 to consider race when evaluating an applicant?

12 **A.** I learned that race may be one factor that we consider as
13 we're evaluating applicants, and it may provide a tip for
14 competitive candidates depending on the individual cases.

15 **Q.** And in that same training, did you learn about other
16 factors that could be considered when evaluating an applicant
17 as a whole?

18 **A.** Yes. Certainly.

19 **Q.** And who lead those training meetings?

20 **A.** Yeah. Grace Cheng led many of those meetings, as well as
21 other senior admissions staff members and admissions officers
22 who had been in the office for a while.

23 **Q.** And did anyone else in addition to you attend the
24 particular training in 2012 when you first began?

25 **A.** Yes. New admissions officers who also started at the

1 same time attended them as well.

2 **Q.** Turn to Tab 2 in your binder, please. Do you see
3 Defendant's Exhibit 004?

4 **A.** Yes.

5 **Q.** What is this document?

6 **A.** This is an agenda for admissions staff orientation in the
7 fall of 2013.

8 **Q.** Did you attend that orientation?

9 **A.** Yes, I did.

10 MS. CONLEY: Your Honor, we offer Defendant's
11 Exhibit 4 into evidence.

12 MS. HACKER: No objection, Your Honor.

13 THE COURT: Admitted.

14 (Defendant Exhibit No. 4 admitted.)

15 BY MS. CONLEY:

16 **Q.** Ms. Ray, do you see the third section titled
17 "Considerations in the Admissions Process: *Fisher* Versus
18 Texas"?

19 **A.** Yes.

20 **Q.** Who was that led by?

21 **A.** That was led by Bob Iuliano of the general counsel's
22 office.

23 **Q.** At a high level, what did that session relate to?

24 **A.** It related generally to race-conscious admissions and
25 Supreme Court decisions and how that relates to our work in

1 the admissions office.

2 **Q.** Ms. Ray, since joining the admissions office and after
3 the training you received as a new admissions officer, do you
4 continue to receive feedback on how you evaluate applicants?

5 **A.** Yes, certainly. So as part of the committee process,
6 there are committee chairs who provide guidance and feedback
7 on my own evaluation of cases and ratings. And during the
8 process of reading files, occasionally that will happen near
9 other admissions officers who may also be reading files, and
10 we're able to have discussions about the nuances of case work
11 together as well.

12 **Q.** In your role as the UMRP director, have you given any
13 presentations about issues of diversity?

14 **A.** Yes. I have given two formal presentations and a handful
15 of others as well.

16 **Q.** And who did you give those presentations to?

17 **A.** I gave them to all admissions and financial aid office
18 staff that were at staff orientation meetings.

19 **Q.** And did anyone else participate with you in giving those
20 particular presentations?

21 **A.** Yes. An admissions officer at the time, Lucerito Ortiz.

22 **Q.** Can you turn to Tab 3 in your binder, which is
23 Defendant's Exhibit 36.

24 **A.** Yes.

25 **Q.** Do you recognize what's been marked as Defendant's

1 Exhibit 36?

2 **A.** Yes.

3 **Q.** What is this document?

4 **A.** This document is the presentation that Ms. Ortiz and I
5 gave in the fall of 2013.

6 MS. CONLEY: Your Honor, we move to admit
7 Defendant's Exhibit 36.

8 MS. HACKER: No objection.

9 THE COURT: It's admitted.

10 (Defendant Exhibit No. 36 admitted.)

11 BY MS. CONLEY:

12 **Q.** And can you turn to page 2 of the document.

13 **A.** Yes.

14 **Q.** What topics were discussed at this first presentation
15 that you and Ms. Ortiz gave?

16 **A.** We discussed broadly issues surrounding the demographics
17 in the United States, information on educational attainment,
18 testing as well as a specific focus on Native American and
19 Latinx populations.

20 **Q.** And I believe Ms. Hacker showed you to what's now at
21 Tab 4 of your binder, Defendant's Exhibit 19.

22 THE COURT: Which tab?

23 MS. CONLEY: It's Tab 4 of your binder, Your Honor.

24 THE WITNESS: Yes.

25 BY MS. CONLEY:

1 **Q.** Now, was this the second presentation in the fall of 2014
2 that you and Ms. Ortiz gave that you were referring to?

3 **A.** Yes, it is.

4 **Q.** And what was this particular presentation about?

5 **A.** This presentation also included information about
6 demographics at large and how to focus on Asian-American and
7 black populations in the United States.

8 **Q.** And if you could, turn to Tab 5 in your binder. These
9 are the notes that Ms. Hacker was discussing with you
10 earlier. Do you recall those?

11 **A.** Yes.

12 **Q.** And let's look at the very first note that Ms. Hacker
13 also referenced during her examination of you.

14 Looking at that note, can you explain why you and
15 Ms. Ortiz decided to give these presentations to the
16 admissions office staff?

17 **A.** From my understanding, these presentations were designed
18 to give context more generally about the experiences of
19 communities of color and students of color in the United
20 States at large. And hopefully this could help admissions
21 officers understand the broad context that students in our
22 applicant pool or on our campus may be facing.

23 **Q.** Can you talk a little bit more about how these particular
24 presentations provided context for admissions officers about
25 applicants of color to Harvard?

1 **A.** Sure. So for example, in our first presentation we
2 discussed generally Native American populations. And having
3 an admissions officer have a general understanding of the
4 demography of the United States at large could help an
5 admissions officer in understanding the particular context
6 that a student who may, say, be from a reservation in a rural
7 area may be coming from.

8 So if a student communicates something about those
9 experiences, having some background knowledge about it may be
10 useful for an admissions officer to situate a certain
11 experience.

12 **Q.** Let's turn back to the 2014 presentation that we were
13 just looking at, which is at Tab 4.

14 THE COURT: Did you move for the admission of this
15 one?

16 MS. CONLEY: I believe that Ms. Hacker did.

17 THE COURT: Sorry.

18 MS. CONLEY: Thank you.

19 BY MS. CONLEY:

20 **Q.** If you turn back to Tab 4 and take a look at page 18,
21 Ms. Ray, what does this slide show?

22 **A.** This slide shows information about different
23 Asian-American ethnicities.

24 **Q.** A little small for me to read from here, but what exactly
25 does it show? Are these national statistics?

1 **A.** Yes. Sorry. So these are national statistics that show
2 information about the numbers of Asian-Americans within given
3 ethnic populations.

4 **Q.** And why was this particular slide included in this
5 presentation that you gave?

6 **A.** We thought it was important to really highlight and
7 discuss the wide diversity that exists within Asian-America
8 or those who may identify as Asian-American.

9 **Q.** Let's turn to the next slide on page 19. And what was
10 the purpose of including this particular slide in the
11 presentation?

12 **A.** This slide helped to provide further context for other
13 items that we would be discussing about the fact that, given
14 that students and populations of people who identify as
15 Asian-American are so diverse, we wanted to really highlight
16 the fact that there's a lot of diversity within that
17 population in terms of country of origin, cultural identity,
18 and other items as well.

19 **Q.** And can you give an example of how this information can
20 provide more context for an admissions officer who was
21 evaluating an Asian-American applicant for admission?

22 **A.** Mm-hmm. Understanding the complexities of identity can
23 really help to situate an applicant more broadly.

24 So for example, if a Cambodian student who lives in
25 the South is writing about the experience of growing up in an

1 immigrant family while also writing about how much they value
2 growing up in Mississippi and love sweet tea, understanding
3 more broadly the complexities of identity can really help to
4 situate someone who's discussing any aspect of that, but
5 certainly the ways that different experiences may impact
6 their own perception of identity or just experiences more
7 generally.

8 **Q.** And did you give this particular portion of the
9 presentation to the admissions staff?

10 **A.** Yes, I did.

11 **Q.** If we could take a look at -- turn to Tab 6 in your
12 binder.

13 MS. CONLEY: Your Honor, if we could turn off the
14 monitors in the gallery?

15 THE COURT: Yes.

16 MS. CONLEY: Thank you very much.

17 BY MS. CONLEY:

18 **Q.** Ms. Ray, can you tell me what defendant's Exhibit 195 is?

19 **A.** This is an application file.

20 **Q.** And have the profile ratings been completed on this
21 application by both a first reader and a second reader?

22 **A.** Yes.

23 **Q.** Ms. Ray, who was the first reader on this file?

24 **A.** I was.

25 MS. CONLEY: Your Honor, we move to admit

1 Defendant's Exhibit 195 into evidence.

2 MS. HACKER: No objection, Your Honor.

3 THE COURT: Admitted.

4 (Defendant Exhibit No. 195 admitted.)

5 BY MS. CONLEY:

6 Q. If you turn to page 3 of the file.

7 MS. CONLEY: Mr. Lee, if we could blow up the very
8 top paragraph.

9 BY MS. CONLEY:

10 Q. What is TMR in the top left-hand corner?

11 A. Those are my initials.

12 Q. And what did you write under your initials?

13 A. Redacted "is noted as exceptionally mature and thoughtful
14 in the TRs. I hope AIV confirms. Clearly very bright. She
15 has made a niche here with music. All-state band and some
16 volunteering. SAT 2s and AIV would help in comparison."

17 Q. And what is TRs or what are TRs?

18 A. Teacher recommendations.

19 Q. And AIV is alumni interview?

20 A. Yes.

21 Q. Now let's turn to pages 24 and 25 in this application.

22 What's reflected on these pages?

23 A. This is the first letter of recommendation or teacher
24 recommendation as part of the file.

25 Q. And focusing on page 25, is there information in this

1 first teacher recommendation that informed your evaluation of
2 the applicant's personal qualities?

3 **A.** Yes. So in the first paragraph it's noted that the
4 student is insightful and personable and that they're a class
5 act. And in the next paragraph it's noted that the student
6 is thoughtful, reflective, and honest. I underlined that
7 about midway down.

8 And at the bottom of that paragraph, I also
9 underlined that the student was mature, passionate, and
10 focused.

11 **Q.** And did you take this teacher recommendation into account
12 when assigning a personal rating for this applicant?

13 **A.** Yes, I did.

14 **Q.** And let's turn to page 27 of this application. What
15 appears at page 27, Ms. Ray?

16 **A.** This is the second teacher recommendation as part of the
17 file.

18 MS. CONLEY: Mr. Lee, if you could blow up the
19 first two paragraphs.

20 BY MS. CONLEY:

21 **Q.** Did the information in this particular teacher
22 recommendation inform your evaluation of the applicant's
23 personal qualities?

24 **A.** Yes.

25 **Q.** And what information in those pages informed your

1 evaluation of the applicant's personal qualities?

2 **A.** The applicant was noted to be exceptional. The applicant
3 also -- it says that she has an extraordinary work ethic, at
4 the bottom of the next paragraph. And at the very bottom
5 that the student demonstrates a never-give-up attitude and
6 responds well to feedback.

7 **Q.** And if we turn back to page 2 of this application, what
8 personal rating did you ultimately assign to this applicant?

9 **A.** A 3++.

10 **Q.** And what does a 3++ mean to you?

11 **A.** That the applicant has strong personal qualities.

12 **Q.** And do applicants with 3++ ratings get admitted to
13 Harvard College?

14 **A.** Yeah. Certainly.

15 **Q.** Just stepping back and looking at the profile ratings for
16 a minute, do those ratings determine whether an applicant is
17 ultimately discussed in subcommittee or in full committee?

18 **A.** No. So these ratings are preliminary and based on the
19 information that we have available at the time that we're
20 assessing them. And I think of them much more as a proxy
21 for, for example, commitment to extracurriculars. But
22 whether we discuss a case, it's much more, and it's all about
23 the substance of the actual case.

24 **Q.** And taking a look there at the academic rating, what
25 academic rating did you assign to this applicant?

1 **A.** A 2-.

2 **Q.** And what information did you consider when assigning the
3 academic rating?

4 MS. CONLEY: If we maybe move up to the top of
5 page 2, Mr. Lee.

6 **A.** At the top you can see that the applicant has a perfect
7 SAT verbal score of 800. That's that first score there. And
8 you can see below that the applicant has a 36 on the ACT.

9 I underlined the composite score at the very end,
10 which is perfect. And the applicant also had four perfect AP
11 scores of 5. That's the highest possible score and one of 4.

12 **Q.** Let's turn to page 23 of the file. Is this the
13 applicant's high school transcript?

14 **A.** Yes, it is.

15 **Q.** What grades did the applicant receive?

16 **A.** All forms of A throughout high school.

17 **Q.** What was the applicant's rank in their high school class?

18 **A.** They were ranked ninth in a class of over 550 students.

19 **Q.** And according to the transcript, what percentile was
20 that?

21 **A.** They were in the top 2 percent of their high school
22 class.

23 **Q.** And did you consider this transcript when evaluating the
24 applicant's academic qualities?

25 **A.** Yes, I did.

1 **Q.** And let's take a look again at page 2, profile ratings.
2 What extracurricular rating did you assign to this applicant?

3 **A.** 3+.

4 **Q.** Ms. Ray, if you could turn to page 13 of the file, what
5 is that document?

6 **A.** This is an activity grid that the applicant provided as
7 part of their application.

8 **Q.** And did you take the information that's on that
9 particular page into account when assigning the applicant's
10 extracurricular rating?

11 **A.** Yes, I did.

12 **Q.** And what specifically did you take into account?

13 **A.** I took into account some of this information about
14 volunteering and other extracurriculars that the student was
15 involved in, and specifically took note of their deep
16 involvement in music.

17 So for example, the student is a clarinetist and
18 lettered in that instrument. And in another instrument, they
19 won multiple junior festival trophies. And they were also a
20 member of the all-state band, which is a statewide
21 recognition that requires students to audition to get into.

22 **Q.** Flipping back to the summary sheet on page 2 of the
23 application, when you're looking at or evaluating an
24 applicant, do you take the applicant's parental occupation
25 into account, the applicant's parents' occupations into

1 account?

2 **A.** Yes.

3 **Q.** And why is that something you would consider when
4 evaluating an applicant?

5 **A.** Yeah. It's something we might consider because it might
6 be able to provide us a little bit more information about the
7 family context. So for example, if both of an applicant's
8 parents work retail jobs, that might lead us to think that
9 they might benefit significantly from our financial aid
10 program or add to socioeconomic diversity on our campus.

11 **Q.** And according to this page, what ethnicity did this
12 applicant self-identify as?

13 **A.** As African-American and white.

14 **Q.** Did you consider there applicant's race when evaluating
15 the application?

16 **A.** I underlined it here, so I would say most likely,
17 probably.

18 **Q.** And why would you consider the applicant's race on this
19 particular application?

20 **A.** As a student with strong academics and robust
21 extracurricular involvement, a competitive applicant, race
22 may be one factor that we consider overall.

23 **Q.** Let's turn back to your comments on the top of page 3 of
24 the file. What was the last sentence that you wrote?

25 **A.** "SAT 2s and AIV would help in comparison."

1 **Q.** What did you mean by that comment?

2 **A.** That having information on the student's SAT subject test
3 and the alumni interview report would help the admissions
4 committee as we're making decisions in our broader pool.

5 **Q.** So at the time that you did those comments in the
6 original profile ratings, you hadn't yet received the alumni
7 interview report?

8 **A.** Correct.

9 **Q.** Let's turn to page 7 of the file. What is this?

10 **A.** This is the alumni interview report.

11 **Q.** And what in the alumni interview report did you consider
12 when evaluating this applicant?

13 **A.** All right. So I considered -- you can see some positive
14 information there in the academics section, that the student
15 is at the top of their class. That's a positive piece of
16 information that was provided.

17 We would have considered that music is a large part
18 of the applicant's life, which the alumni interview report
19 notes in the extracurricular section, and that they're
20 involved somewhat otherwise.

21 And then in the personal quality section, it says
22 that while setting up the interview, in that first line
23 there, the applicant seemed exceptionally shy and formal, and
24 in person her mannerisms supported that impression.

25 And a little further down it also says that the

1 applicant seemed reluctant to discuss substantive topics in
2 depth.

3 And then in the overall section, it seems to note
4 that the applicant seemed a bit rehearsed or perhaps coached.
5 So there were some positive aspects, but overall the
6 interview seems a bit flat.

7 **Q.** And, Ms. Ray, was this applicant ultimately admitted to
8 Harvard College?

9 **A.** No, they were not.

10 **Q.** And why not?

11 **A.** In a pool that's as competitive as ours, we have a lot of
12 students who are really talented. Even if you're
13 academically qualified, even if you have a lot of
14 extracurricular engagement, a flat alumni interview can make
15 you less compelling in our really deep and talented pool.

16 **Q.** And is that true regardless of the race or ethnicity of
17 the applicant?

18 **A.** Yes.

19 **Q.** Ms. Ray, do you find it difficult to reject competitive
20 students who have the qualifications to succeed at Harvard?

21 **A.** Absolutely. I think that's the most difficult part of my
22 job. I get to read about and learn about so many talented
23 students from all over the country. And at the end of the
24 day, some of the students whose stories I remember the most
25 vividly and who had the most impact on me were ultimately not

1 admitted to Harvard. And it's just the reality of our
2 talented pool.

3 **Q.** Ms. Ray, in the six years that you've worked as an
4 admissions officer, about how many files have you read?

5 **A.** Thousands.

6 THE COURT: Can I get back to page 3 on this one,
7 the second reviewer. "Extremely smart and one" something.

8 THE WITNESS: Would you like me to read that?

9 THE COURT: Please. I need some translation here.
10 Extremely smart. What's after that?

11 THE WITNESS: So these aren't my notes, but I'll
12 also do the best job.

13 THE COURT: If you can do them.

14 THE WITNESS: And one we'll likely want to likely
15 do.

16 THE COURT: "Want to likely do."

17 What does that mean, if you know?

18 THE WITNESS: From my understanding, or how I would
19 interpret that is that it's a competitive applicant.

20 THE COURT: I was less sure about PQs. Is that
21 what that says?

22 THE WITNESS: Yes.

23 THE COURT: What's PQs? Is that a word that you
24 use?

25 THE WITNESS: It's an abbreviation for personal

1 qualities.

2 THE COURT: "Given her own writing," but what was
3 warmer? Oh, support was warmer, hoping that her interview
4 will clarify. Okay. Thank you.

5 BY MS. CONLEY:

6 **Q.** Ms. Ray, just for clarification there, can you read the
7 last two sentences of those notes?

8 **A.** Yes. "Hoping, as TMR notes, that IV will clarify.
9 Frankly, if it does, we should/could ponder a likely."

10 **Q.** What is "a likely"?

11 **A.** "Likely" refers to a likely letter that our office may
12 send for competitive applicants.

13 **Q.** Again after the alumni interview came in, this applicant
14 was ultimately rejected?

15 **A.** Correct.

16 **Q.** Now, Ms. Ray, in the six years that you've been an
17 admissions officer, how many subcommittee meetings have you
18 attended?

19 **A.** Over six years, about 100.

20 **Q.** And in those subcommittee meetings, about how many
21 applicants did you discuss?

22 **A.** Thousands.

23 **Q.** And in those six years, about how many full committee
24 meetings have you attended?

25 **A.** About 50.

1 **Q.** And in those full committee meetings, about how many
2 applications would you say you discussed?

3 **A.** Over six years, thousands.

4 **Q.** In your six years at the admissions office, how many
5 times have you seen an admissions officer show bias against
6 an applicant because of his or her race?

7 **A.** Absolutely never.

8 **Q.** And when you're determining whether to admit an
9 applicant, have you ever seen any of your colleagues consider
10 an applicant's race as a negative factor?

11 **A.** I have never seen that.

12 **Q.** Ms. Ray, have you ever rejected an applicant because of
13 his or her race?

14 **A.** Certainly not.

15 **Q.** And in your six years in the admissions office, have you
16 ever seen anything to substantiate accusations of bias
17 against Asian-Americans in the admissions process?

18 **A.** Never.

19 MS. CONLEY: Nothing further.

20 MS. HACKER: Your Honor, can we have a sidebar?

21 THE COURT: Sure.

22 [Sidebar sealed and redacted.]

23 THE COURT: Have you had enough, Mr. Hughes?

24 MR. HUGHES: Ms. Hacker asked me the question,
25 which is whether we want to keep on trucking with reading

1 depositions. I gave her the affirmative nod, but Ms. Daly is
2 shaking her head.

3 MR. MORTARA: I would suggest we break for the day.

4 THE COURT: Joan will clearly agree with you. For
5 tomorrow, I don't have anything tomorrow afternoon either.
6 For tomorrow, we can also go as long as you want, with the
7 caveat that I have a quick status conference scheduled for
8 2:30. So we will take at least a 15-minute break at 2:30.
9 Other than that, we'll start at 9:30 and we'll go as long you
10 want. Okay?

11 MR. MORTARA: Thank you, Your Honor.

12 MR. LEE: Thank you, Your Honor.

13 (Court recessed at 4:35 p.m.)
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF WITNESSES

WITNESSPAGE

MARK HANSEN

Examination By Mr. Hughes	9
Examination By Ms. Ellsworth	49
Re-Examination By Mr. Hughes	68

ROGER BANKS

Examination By Mr. Connolly	78
Examination By Ms. Ellsworth	87

CHARLENE KIM

Examination By Mr. Strawbridge.....	125
Examination By Ms. Gershengorn.....	138

TIA RAY

Examination By Ms. Hacker.....	178
Examination By Ms. Conley.....	206

E X H I B I T S

Defendant ExhibitReceived

SA3	.....	173
4	.....	224
SA4	.....	169
P9	.....	37
P16	.....	67
DX19	.....	184
26	.....	226
DX27	.....	152
P46	.....	53
DX47	.....	98
P75	.....	186
DX103	.....	154
DX106	.....	145
DX111	.....	146
195	.....	231
262	.....	110
DX527	.....	159

Plaintiff ExhibitReceived

P55	.....	202
P99	.....	182
P200	.....	197